COMPARATIVE
CRIMINAL JURISPRUDENCE.

Vol. I.

PENAL LAW.

THE INDIAN PENAL CODE,

ACT No. XLV OF 1860, AS AMENDED BY ACTS XIV AND XXVII OF 1870; VIII OF 1882; AND X OF 1886.

With Annotations from the Laws of other Countries.

BY

H. A. D. PHILLIPS,

BENGAL CIVIL SERVICE.

CALCUTTA:

THACKER, SPINK AND CO.

LONDON:—STEVENS AND SONS, 119, CHANCERY LANE.

1889.

343
P559

CALCUTTA:
PRINTED BY THACKER, SPINK AND CO.

4246

To

Sir James Fitzjames Stephen,

K.C.S.I., D.C.L.,

FORMERLY LEGAL MEMBER OF THE COUNCIL OF THE GOVERNOR-GENERAL OF INDIA,

This book is, by permission, respectfully dedicated.

PREFACE.

THE writer craves the indulgence of lawyer critics. His book has been written rather for the criminal jurist than for the practising lawyer, and his especial object has been to bring to notice the provisions of Continental Criminal Codes, and to compare them with the Indian law. At the same time he is sanguine enough to hope that the book may be found useful by the Indian Courts, and that it may be of some service also to the Legislative Department of the Government of India.

The writer regrets that, for reasons which it is unnecessary to mention, he was unable to work the matter in the Appendix to Vol. I into the notes under the text of the Indian Penal Code. The writer is keenly conscious that his book has many defects of form: he had projected a more ambitious work, but has been compelled to curtail it, mainly owing to want of leisure and access to good libraries. He, however, feels justified in publishing the the results of the study of a number of Criminal Codes, many of which, he believes, are seldom, if ever, read by English or Indian lawyers and administrators.

In the list of abbreviations, English Law Reports have not been included, as, with a few exceptions, the writer has not referred to the original reports. He has referred to the original American Reports (in the Inner Temple Library), but cannot quote the names of the Reporters or Publishers. The rulings of the Court of Cassation in Paris have been obtained principally from the annotated edition of the French Criminal Codes by M. M. Faustin Hélie and Paul Pont.

Many of the references to books are self-explanatory, and have therefore not been entered in the list of abbreviations.

The writer has to acknowledge the courtesy of the President of the Committee of Foreign Legislation, Ministry of Justice, Paris, in having sent him certain Codes and helped him to procure some other books, which the writer might otherwise have found it impossible to procure.

The New York Penal Code was passed in 1881, and was amended by laws of 1882, 1883, and 1884. My references are to an older code, and I therefore give here the correct section-numbers in brackets after the numbers printed in the text: 600 (16), 10 (11), 737 (708), 39 (40), 98 (44), 204 (145), 744 (684), 169, 170 (80, 113), 153, 154, 157, (97—101), 189 (130), 765, 766, (718), 368 (322), 468 (434), 451 (407), 300 (183), 253 (193), 229 (174), 332 (287), 333 (288), 264 (207), 306 (223), 328 (284), 613 (552), 281 (225), 417 (365), 480 (369), 338 (299), 342 (302), 311 (244).

It only remains to state that it has not been considered necessary to print Schedule II of the Code of Criminal Procedure.

RAMPORE BEAULEAH,
BENGAL,
March, 1889.

H. A. D. PHILLIPS,
District Magistrate of Rajshahye.

LIST OF ENGLISH CASES CITED.

	Page.
Agnew *v.* Jobson	285
Archibald Stewart's Case	256
Armorie *v.* Delamirie	187
Att-Gen. *v.* Siddons	42
Att-Gen. for Hongkong *v.* Kwok-a-Sing	290
Barnes *v.* Ward	277
Barrett *v.* Long	230
Beatty *v.* Gillbanks	58
Binn's Case	268
Bradlaugh *v.* The Queen	280
Bromage *v.* Prosser	231
Buckner's Case	137
Busst *v.* Gibbons	273
Butt *v.* Conant	52
Byrne *v.* Boodle	278
Calder *v.* Halkett	260
Campbell *v.* Spottiswoode	236
Carr *v.* Hood	236
Carstairs *v.* Taylor	275
Cavey *v.* Lidbetter	280
Clifford *v.* Brandon	60
Codd *v.* Cabe	36
Coleman *v.* Riches	41
Conolly's Case	265
Cook *v.* Nethercote	269
Cooper *v.* Booth	270
Cooper *v.* Lawson	234
Cundy *v.* Lecocq	113
Dacre's Case	11
Davis *v.* Shepstone	301
Dawkins *v.* Lord Paulet	302
Dunn *v.* Birmingham Canal Co.	275
Eley *v.* Little	293
Emperor of Austria *v.* Day	274
Entinck *v.* Carrington	52
Ex-parte Bailey	207
Ferens *v.* O'Brien	178
Ferguson *v.* Kinnsul	231
Fray *v.* Blackburn	260
Frost's Case	268
Fuller's Case	235
Galliard *v.* Laxton	36
Gelan *v.* Hall	260
Gilpin *v.* Fowler	238
Gurney's Case	80

BENGAL SECRETARIAT LIBRARY

Page.

Harring *v.* Watson 280
Harrison *v.* Bush 302
Hartley *v.* Cummings 296
Hewlett *v.* Cruchley 90
Hicks *v.* Faulkner 273
Hunter *v.* Johnson 285
Hunter *v.* Walsh 236

Jones *v.* Boyce 144
Jones *v.* Dowle 286

Kearney *v.* L. B. & S. C. Railway Co. 279
Kemp *v.* Neville 260

Langrish *v.* Archer 303
Laws *v.* Eltringham 200
Lewis *v.* Clement 234
Lewis *v.* Levy 301
Lister's Case 123
Lumley *v.* Gye 297

Macdonald *v.* Rooke 90
Mackally's Case 36
Macleod *v.* Wakley 236
Martin *v.* Shoppee 285
May *v.* Burdett 126
McDougal *v.* Christie 238
Munster *v.* Lamb 298

Nichols *v.* Marsland 275
Nugent *v.* Smith 275

O'Brien *v.* Clement 231
O'Connell *v.* R. 52

Paris *v.* Levy 233
Peake *v.* Oldham 231
Pearson's Case 136
Prynne's Case 52

R. *v.* Akers 270
R. *v.* Allen 174, 227, 254
R. *v.* Allen and others 136
R. *v.* Almon 235
R. *v.* Anderson 253, 254
R. *v.* Ashwell 288
R. *v.* Azzopardi 254
R. *v.* Badger 96
R. *v.* Bangor 61
R. *v.* Barrow 172
R. *v.* Barry 271
R. *v.* Barton 263
R. *v.* Bembridge 70
R. *v.* Bennett 276, 296
R. *v.* Berriman 150
R. *v.* Best 266
R. *v.* Bether 101
R. *v.* Bingley 34
R. *v.* Birmingham and Gloucester Railway Co. 280
R. *v.* Biswell 166

Page.
R. v. Booth 167
R. v. Borthwick 12
R. v. Bradshaw 141
R. v. Brown and Webb 226
R. v. Brown 150
R. v. Bubb 143, 285
R. v. Burgess 273
R. v. Burton 177, 293
R. v. Butcher 267
R. v. Butt 291
R. v. Camplin 172
R. v. Carlile 234
R. v. Carr 253
R. v. Case 162
R. v. Chamberlain 283
R. v. Chapman 247, 306
R. v. Cheeseman 305
R. v. Cheverton 140
R. v. Clark 114, 172
R. v. Closs 295
R. v. Cockburn 174
R. v. Coleridge 280
R. v. Collins 247, 268, 305
R. v. Cork 239
R. v. Coxhead 150
R. v. Critchley 299
R. v. Cross 195
R. v. Cruse 29
R. v. Cuddy 138
R. v. Curgerwen 226
R. v. Curtis 283
R. v. Cuthell 233
Re Davis 65
R. v. Davis 29, 281
R. v. Dawson 290
R. v. Day 161
R. v. Dicks 265
R. v. Dring 191
R. v. Dudley and Stephens 140
R. v. Dyson 282
R. v. Eardley 285
R. v. Egginton 177
R. v. Empson 146
R. v. Enoch 149
R. v. Esop 25
R. v. Evans 282
R. v. Eyre 256
R. v. Fisher 38
R. v. Flattery 172
R. v. Fleet 234
R. v. Flowers 287
R. v. Foster 272
R. v. Fouthefton 213
R. v. Franklin 144
R. v. Franz 11
R. v. Friend 284
R. v. Gamlen 30
R. v. Gore 139

Page.
R. v. Gregory 267
R. v. Green 167
R. v. Greenwood 274
R. v. Guernsey 289
R. v. Hall 25
R. v. Handley 281
R. v. Hart 235
R. v. Harvey 233
R. v. Hazzelwood 293
R. v. Hesseltine 205
R. v. Hicklin 127, 280
R. v. Hicks 241
R. v. Hindmarsh 140
R. v. Hodgson 295
R. v. Holland 281
R. v. Holloway 289
R. v. Holmes 65, 173
R. v. Hook 143
R. v. Hopkins 140
R. v. Horne 52
R. v Horton 226, 296
R. v. Howell 169
R. v. Jackson 172
R v. Jacobs 174
R. v. James 285
R. v. Jennison 193
R. v. Johnson 52, 286
R. v. Jones 70, 121, 177, 293
R. v. Kelly 38, 136
R. v. Keyn, Franconia 254
R. v. King 241
R. v. Knight 65
R. v. Larner 194
R. v. Layton 263
R. v. Lolly 228
R. v. Lopez 253
R. v. Lord G Gordon 235
R. v. Lorelf 146
R. v. Mabbett 124
R. v. Macdaniel 266, 282
R. v. Maddy 38, 285
R. v. Manning 38
R. v. March 285
R. v. Markuss 289
R. v. Martin 157
R. v. Mawbey 80
R. v. McPherson 305
R. v. Mcgrath 183
R. v. Meakin 29
R. v. Megson 173
R. v. Middlemore 61
R. v. Miller 167
R. v. Moore 227
R. v. Moore 296
R. v. Morby 144
R. v. Morris 150, 265
R. v. Most 41, 268
R. v. Mullany 271

Page.
R. v. Mullins 121
R. v. Mussett 207
R. v. Mycock 167
R. v. Nash 295
R. v. Naylor 194
R. v. Neale 268
R. v. Nichol 162
R. v. Opie 160
R. v. Oxford 28
R. v. Parnell 266
R. v. Pease 114
R. v. Penny 256
R. v. Perkins 65
R. v. Pigott 267
R. v. Prince 168
R. v. Quarl 267
R. v. Ramsay 239, 299
R. v. Randall 203
R. v. Read 174
R. v. Redman 181
R. v. Reed 291
R. v. Rice 241
R. v. Richards 182
R. v. Ritson 292
R. v. Robinson 126
R. v. Rosinski 162
R. v. Rose 266
R. v. Russell 203
R. v. Sallis 148, 149. 281
R. v. Salmon 141
R. v. Saunders 172
R. v. Sawyer 281
R. v. Schlasinger 80
R. v. Scofield 267
R. v. Scott 130
R. v. Senior 148
R. v. Sharpe 59
R. v. Sharling 130
R. v. Shawe 3
R. v. Smith 191, 195
R. v. Spilling 282
R. v. Squire 284
R. v. St. George 285
R. v. St. John Long 142
R. v. Stephens 42, 279
R. v. Stokes 28
R. v. Stratton and others 256
R. v. Sullivan 268
R. v. Sweenie 173
R. v. Taylor 280
R. v. Thomas 29
R. v. Timmins 166
R. v. Tinckler 132
R. v. Topham 299
R. v. Tram 113
R. v. Turner 226
R. v. Twidleton 169
R. v. Twose 260

	Page.
R. v. Van Butcher	142
R. v. Waddington	243
R. v. Wagstaffe	260, 261
R. v. Wagstaff.	243
R. v. Walker	173
R. v. Wathey	191
R. v. Welch	274
R. v. Wellard	303
R. v. West	132, 148
R. v. White	150
R. v. White	275
R. v. Williams	241
R. v. Williamson	142
R. v. Wilkins	154
R. v. Willoughby	11
R. v. Winterbotham	268
R. v. Woodburn	139
R. v. Woodward	191
R. v. Wright	281
R. v. Wright	148, 149
R. v. Wyatt	70
R. v. Yardley	285
R. v. Young	138
R. v. Zulueta	3
Roberts' case	247
Rylands v. Fletcher	275
Santos v. Illidge	3
Santissima v. Trinidad	251
Saunders v. Mills	234
Saunders' Case	139
Scott v. Stansfield	260
Scott v. London Dock Co.	278
Sewell v. Taylor	65
Singer Co. v. Wilson	220
Stacy v. Whitehurst	42
Stedman's Case	137
Steele v. Brannan	280, 301
Stevens v. Midland R. Co.	90
Stockley v. Hornedye	90
Stuart v. Lovell	234
Tabart v. Tipper	236
Todd v. Hawkins	338
Usill v. Hales	301
Vaughan v. Menlove	278
Vaughan v. Taff Railway Co.	275
Watson v. Walter	234
Watkins v. Smith	206
White v. Feast	201, 207
Willans v. Taylor	90
Williams v. Adams	207
Williamson v. Frere	302
Woodgate v. Ridcout	235
Young v. Hichens	288

LIST OF SOME ABBREVIATIONS AND REFERENCES.

Al. Cr. L.	...	Alison, Scotch Criminal Law.
American Reports	..	Ala.. Ark., Cal., Fla , Ga.. Mass., Mich., Minn.. Miss. Mo., N. C., Neb., Ky.. S. C., Tenn., Tex. = Alaska, Arkansas, California, Florida, Georgia, Massachusetts, Michigan, Minnesota, Mississipi, Missouri, North Carolina, Nebraska, Kentucky, South Carolina, Tenneesee, Texas.
Bac Max.	...	Bacon's Maxims.
Bl. Com.	...	Blackstone's Commentaries.
Belg.	...	Belgian.
Bom. H. C.	...	Bombay High Court Reports.
C. L. R.	..	Calcutta Law Reports.
Cass.	...	Rulings of Court of Cassation, Paris.
Cox, C. C,	...	Cox's Criminal Cases.
C. O. J.	...	Code of Judicial Organisation.
C. P. C.	...	Code of Criminal Procedure.
Dalton, J. P.	...	Dalton's Justice of the Peace.
Den.	...	Denmark.
Fr. ...	...	French.
G., Germ.	...	German.
Hale. P. C.	...	Hale, Pleas of the Crown.
Hawk.	...	Hawkins' Pleas of the Crown.
Hung.	...	Hungarian,
I. L. R., 5 Cal.	...	Indian Law Reports, Calcutta Series, Vol. 5.
I. L. R., 5 Bom.	...	" Bombay " "
I. L. R., 5 Mad.	...	" Mad. " "
I. L. R., 5 All.	...	" Allahabad " "
Ital.	...	Italian.
Kyshe S. S. Rep.	...	Kyshe's Straits Settlement Reports.
L. C. J.	...	Lower Canada Jurist
L. C. R.	...	Lower Canada Reporter.
Lou.	...	Louisiana.
Mad. H. C. Rep.	...	Madras High Court Reports.
Macdon.	...	Macdonald's Criminal Law of Scotland.
N. Y.	...	New York.
Pa. St.	...	Pennsylvania State.
P. C.	...	Penal Code.
Pat. Lib. Pr.	...	Paterson, Liberty of the Press.
Pat. Lib. Sub.	...	Paterson, Liberty of the Subject.
Russ.	...	Russian.
Russ. Cr.	...	Russell on Crimes.
St. Tr.	...	State Trials.
Steph. Dig.	...	Stephen's Digest, Crimes and Punishments.
Step. Dig., C. P. C.		Stephen's Digest, Criminal Procedure.
T. E.	...	Tribunal of the Empire (German).
Vic. Dig.	...	Kerferd and Box's Victoria Digest.
12 W. R., Cr.	...	Weekly Reporter, Vol. XII, Criminal Rulings.

INTRODUCTION.

THE science of Comparative Criminal Jurisprudence is but little known in England, though it has made considerable progress on the continent. The French Government has a special Department, attached to the Ministry of Justice, for the translation of foreign Laws and Codes. A knowledge of the laws of other civilized countries is even more essential for the legislator than for the lawyer or jurist. This fact was made painfully manifest during the passage of the Criminal Law Amendment Act of 1885 through the House of Commons. Though many of the members of that House are lawyers, yet the discussions on the bill were characterized by a veritably abysmal ignorance concerning the provisions of Continental and American law *in pari vel simili materiâ*. Had our statesmen and legislators possessed but a moderate acquaintance with the criminal codes of Europe, some few provisions at least of that Act would have found a place on the Statute-book years before, while others could never have been passed at all. Nor would it be difficult to cite instances to show that such ignorance may even affect judicial decisions regarding the law as it actually exists. I will give only one example from India, but that example is a very typical and striking one. Some years ago a Judge of the highest Appellate Court in one of the provinces of British India, while reducing a sentence passed by a subordinate Court for the offence of adultery, actually remarked from the Bench that such prosecutions were to be deprecated, as adultery *did not constitute a criminal offence in the civilized countries of Europe!* Livingston has pointed out, in his Introductory Report to the Louisiana Code of Crimes and Punishments, that England is about the only country in which adultery is *not* a criminal offence.

It is especially necessary at the present time that the statesmen of England should possess some knowledge of the criminal laws of other countries. It is to be hoped that the Irish clouds may soon roll by, and give the House of Commons time to turn its attention to the consideration of a criminal code. The necessity for amending the English criminal law has been admitted for more than half a century. In the years 1833, 1836 and 1837 there were three different Commissions, who submitted eight Reports. In 1845 there was a fourth Commission, which submitted five Reports. In 1852 a bill prepared by Lord St. Leonards was dropped. In 1853 a copy

of this bill was sent to the Judges to report on, but they were not pleased with it. In 1856 a number of bills were prepared under the direction of Lord Cranworth, and seven of these were with some modifications passed into law. These Acts, known as Greaves' Consolidation Acts (24 and 25 Vict., cc. 74—100), made no attempt at codification. After two decades of inaction we come to the famous Code of 1878, prepared by Sir James Stephen. This bill was actually read a second time, but was afterwards withdrawn. It was subsequently thoroughly examined and overhauled by a Commission consisting of Lord Blackburn, Sir James Stephen, and Messrs. Justices Barry and Lush, and their Report was presented to the House of Commons in 1879. But all attempts to pass codes met with the same fate. The Criminal Code (indictable offences) Bill was withdrawn after having been read a second time. It was opposed, among others, by Lord Chief Justice Cockburn, who, however, made the notable declaration that he had long been a firm believer in not only the expediency and possibility, but also in the coming necessity, of codification. In 1880, two bills were introduced, but neither was passed. One was a Government bill, known as "the Criminal Code," and the other, known as "the Criminal Code (No. 2)," was brought in by private members. The former was actually read a second time and referred to a Select Committee, but Parliament dissolved soon afterwards, and in the following year the Attorney-General declared that the Government had no intention during that session of introducing a bill for the codification of the criminal law. Since then a policy of *inquieta non movere* has prevailed, and to put it *more Persico*, the still serenity of the sky of legislative inaction has been but once disturbed by the forged thunderbolts of the *Pall Mall Gazette*, when, in the year 1885, the tiny barque of the Criminal Law Amendment Act was hurried safely into port on the summit of a wave of frenzied excitement. There have been other isolated Acts, creating new offences, such as the Merchandise Marks Act, and Margarine Act of 1887, but no attempt to codify or consolidate.

Even the Code of 1880, though it proposes to sweep away many technicalities,* such as the distinction between felony and misdemeanour, is still susceptible of much improvement; and if England is to have her criminal law codified, her legislators may as well derive what advantage they may from the labours of modern criminalists and jurists, and bring such a code up to the

* This code also contains provisions for simplifying the law of theft and fraud, for the abolition of the doctrine of constructive malice in homicide, for the simplification of indictments, the law of venue, and procedure generally, while it gives a more satisfactory appeal on points of law

level, so to speak, of the most recent dicta of the science of criminal law. The French Penal Code of 1810, which served for half a century as a model to the legislators of Europe, has fallen behind in the race, and its place was taken by the German Code of 1870. The principles, systems, and definitions of the French Code were subjected for a long time to the criticisms of jurists, and the German Legislature has carried the results of those criticisms into the domain of law. But even the German Code can hardly be called a model at the present day: we have also the Italian Code, the Hungarian Code of 1879, and the Dutch Code of 1881. In this Introduction I speak only of Penal and not of Procedure Codes. In these we find rigorous definitions of the conditions of criminal liability, while elements of complicity and degrees of culpability are distinguished with a *luxe de nuances* which commands our admiration. Their provisions on other points may usefully be studied by the English legislator, such as those regarding enhanced punishment on reconviction (la récidive), cumulation of punishments (la cumule), attempts (la tentative), prescription, and kinds of punishment. It will, moreover, be seen that a certain number of acts and omissions are made penal, which are not penal in England, but which certainly ought to be made so.

But it is not only statesmen who should have a knowledge of the differences in the codes of different countries, of their varying peculiarities and characteristic traits. Such a knowledge is invaluable also to the philosopher and moralist; it is of service to the historian in constituting at least one additional means of understanding national character or idiosyncrasies; it may add powerful weapons of argument to the armoury of the practising lawyer; while, for the Magistrate and Judge, it supplies solid material for measuring criminality, weighing degrees of culpability, and for determining the amount of punishment to be inflicted. For instance, under sec. 75 of the Indian Penal Code, a person re-convicted of certain offences is *subject* to enhanced punishment. A man may be charged with theft before a Magistrate, and two previous convictions are proved against him, but perhaps eight years have elapsed since his release from prison. The Magistrate is doubtful whether to decide the case himself or to commit it to a higher court. In France and Belgium an offender is not considered a recidivist, if more than three years have elapsed since his release from prison; in Holland a lapse of five years, and in Denmark and Hungary of ten years, from such date prevents the infliction of any enhanced punishment. An Indian Magistrate, aware of these provisions, would probably prefer to act in accordance with their spirit rather than follow the extreme severity of the English law on this point. In England it is essential to the offence of perjury that the

false evidence should have been given on some point material to the issue. In India this is not necessary. But if the false evidence is not material, an Indian Magistrate should consider such fact in awarding punishment. In England or in India a sister is prosecuted for harbouring a criminal brother, only the husband and wife being excepted from the operation of the law. It may be useful for a deciding officer to know that in some other countries, such as France, Belgium, and Louisiana, brothers and sisters and other near relatives are also excepted. Instances such as these might be multiplied.

A knowledge, then, of comparative criminal law is of use to many classes of persons, but perhaps most of all to those whose duty it is to frame the laws of their country; and it certainly is surprising, to say the least, that such knowledge should not be possessed by English lawyers holding seats in the House of Commons. Though rid of its worst barbarities, the English criminal law is still marked by defects and omissions, and replete with harsh anomalies. In their next attempt to pass a code, it should be the object of the Legislature to completely supply the omissions and sweep away all the anomalies. A study of the Criminal Codes of Europe suggests numerous questions for discussion and decision, many of which have not been even alluded to in the Reports and draft Codes hitherto prepared. A few instances may be given: The want of any proper classification or gradation in the English law of homicide leads to some very curious results. Two men agree to commit suicide, the one survives the attempt, the other perishes. Is the former to be considered guilty of the murder of the other? He is so only in England. A man is ill and knows he cannot recover; tortured with agonizing pains, he may linger on for months, and he asks a relative to mix some swift and painless poison in his food or drink. Is the relative, who complies with such a request, earnestly made and repeated with solemn adjurations, to be placed in the same category as the murderer? The criminal jurists of Austria-Hungary deem three years' reclusion to be a sufficient punishment for this act; in Holland the maximum is twelve years. Then, again, there is the question of homicide by simple omission. A blind man is walking towards a precipice. Is the man, who omits to apprize him of the fact, guilty of homicide? Under the law in England and India he is not so guilty; but there is no doubt that such an omission should in certain circumstances be punished. By Art. 450 of the Dutch Penal Code, "he who, seeing another person suddenly threatened with the danger of death, omits to give or furnish him with assistance, which he can give or procure without any reasonable fear of danger for himself or others, is punished, if the death of the person in distress has

resulted, with three months' imprisonment and fine." Article 484 of the Louisiana Penal Code enacts that "homicide by omission only is committed by voluntarily permitting another to do an act (*e. g.*, the case of the blind man walking to a precipice) that must, in the natural course of things, cause his death, without apprizing him of his danger, if the act be involuntary, or endeavouring to prevent it, if it be voluntary." The Legislature should also define clearly how far the infliction of hurt on oneself is an offence, when committed to avoid a public duty, or to enable a person to beg. The provisions in the New York Code on these points are worthy of imitation. A recent case of defamation, tried before Sir James Stephen, shows that the Legislature should clearly declare how far defamation of deceased persons is an offence. It is pleasing, in this connection, to turn from a system, in which such points are decided by Judge-made law, if and when they arise, to the precision of certain Continental criminal codes. The Penal Code of Hungary gives the right of prosecution only to the children, father, mother, brothers, sisters, husband or wife of the deceased person; in Holland, the right is extended to relatives, in a direct or collateral line, up to the tenth degree. The Indian Penal Code gives it to "near relatives." The recent revelations concerning the supply to the army and navy of cork-screw bayonets and cutlasses make it worthy of consideration whether certain breaches of contract should not be criminally punishable, as in France, Germany, and Austria. Even the Penal Code of a less warlike nation (the Dutch) punishes fraud in the delivery of articles necessary for the fleet or the army, by which the safety of the State may be endangered in time of war. It is sufficient if the things are supplied during a time of peace, if the act is likely to compromise the safety of the State during a time of war. In England there is no statutory law, embodying the maxim *de minimis non curat lex;* neither in England nor in India are there any special provisions dealing with the breach of official secrets or the opening of letters. Many sorts of false certificates are not punishable in England, and would be only punishable in India (s. 182) if intended to deceive a public officer. The French and German Penal Codes punish those who falsely certify to illness or infirmities incapacitating for public service, or who fabricate false certificates of good conduct, of poverty, or of circumstances intended to procure any one a situation, credit or help. Another section punishes false certificates of all sorts from which damage may result to a third person or the public. The Italian, Dutch, and Hungarian Penal Codes contain some similar provisions.

The above instances suffice to show the necessity for very considerable amendments in, and additions to, the English criminal law. But what is more than all necessary is codification. Owing

to the long-continued system of having special enactments for everything, the multitude of laws added to the English Statute-book is almost incredible—10,000 Acts were passed during the reign of George III alone! It is remarked by Sanford, in his work on the Penal Codes of Europe, that a simple Manual for a Justice of the Peace (Burns' Justice) contains one hundred times the number of pages employed to express all the penal laws of a minutely-administered country like France. An English practising lawyer must spend a small income, in order to have a decent law library of his own; and even so, he could not put his finger so readily on the law as an enlightened Bengal ryot, who has been represented as having 8 annas worth of cloth round his loins, a Penal Code in his right hand, and Act X (Law of Landlord and Tenant) in his left. English lawyers, as a body, know no system of law but their own, and they appear to be so enamoured of it and cling to its traditions with such tenacity, that reform makes little or no headway. The voices of ardent reformers cry in the wilderness, and their labours are but those of Sisyphus. Things are allowed to run on in the old grooves, because lawyers as a body are probably averse to any radical changes. Short lucid codes, cheap, accessible, and easily understood of the people, will not increase Othello's occupation. Hence an attitude of dull, passive resistance which can only be overcome by convincing the English public—the sole lever for influencing the action of ministers—of the necessity for reform. Jeremy Bentham, single-handed, made some impression on the inert and sluggish mass, and Sir James Stephen has lopped off some at least of the heads of the Hydra of opposition. Still the English law remains, in this penultimate decade of the 19th century,

"Monstrum, horrendum, informe, ingens, cui lumen ademptum."

What is required is a compact phalanx of reformers, working in unison, to din the thrice-told tale of codification into the ears of the drowsy masses, and to convince them, by an unceasing drip of demonstration, that universal suffrage is but a paltry boon to a nation in comparison with the codification of its laws.—

"Gutta cavat lapidem non vi, sad sæpe cadendo."

"Will Englishmen," says Mr. J. G. Phillimore, "always be content with repeating ludicrous panegyrics on their coarse, slovenly, confused and incessantly vacillating laws, instead of seeking to digest them into some state, if not equal to the finished state of Rome, less scandalous at least to civilized men?" The late Mr. Sheldon Amos has remarked that "the study of English law in its present shape is the most distorting, nauseous, and mentally paralysing mode of education that the most injudicious and cruel instructor could devise. Scarcely a single text-book or commentary has

been written by a jurist, or by any one accurately acquainted with any other system but his own." He goes on to denounce the "bad metaphysics, bad ethics, bad logic, false and cross divisions, the bigoted distaste for everything not home-born, and the pervading abhorrence of correct classification." No doubt these denunciations are absurdly hyperbolical, and even partially untrue, but there is some truth in them, and one can understand the sense of dissatisfaction with English law which the English jurist must feel, in a greater or lesser degree, when he has drunk deep of the Pierian fount of Rome, comes into view of the Elysian fields of the science of comparative jurisprudence, and contrasts the compact and comprehensive codes of Italy and India, Germany and France, with the musty, lumbering, and scattered statutes of his own country.

In conclusion, statesmen should not entirely abandon the work of codification to lawyers. They should bear constantly in mind the history of law reform in England, and if they themselves are convinced of the necessity for sweeping reforms, they should have the boldness to introduce them in spite of the dissentient voice of the legal profession. During the debates on the Criminal Law Amendment (Ireland) Bill, Sir W. V. Harcourt remarked that the history of the criminal law of England showed that it had been reformed *in spite of the Judges*, and he instanced the unanimous representation of the Judges presented by Lord Ellenborough against the bill of Sir Samuel Romilly, afterwards carried by Sir R. Peel, when they say, "that no property will be safe in this country, if you remove the capital punishment for stealing from a shop to the amount of five shillings." Those who have read the writings of Jeremy Bentham know that there is a good deal of truth in Sir Vernon Harcourt's allegation. To the people of India, no less than to the people of England, is it of vital importance that the English criminal law should be simplified and codified, and freed from its many anomalies and absurdities. For nearly one-half of the Judges of our highest appellate courts in India are English barristers, appointed fresh from England, and so influenced by their legal training there, and so saturated with the narrowness and technicalities of English procedure, that it is an impossibility for them to do justice to the Indian codes. Some of them make no secret of their dislike of the Codes, and chafe at not being able to apply English law as freely as they wish; and experience has shown, as a matter of fact, that their interpretations of the law are often diametrically opposed to the intention of the Indian Legislature. The present state then of English law and procedure produces evils of alarming magnitude and of the most far-reaching consequences; and it is now high time for the English public, through their representatives in Parliament, to insist on radical reforms. They

should no longer be content to be harassed with nuisances, which the law is too weak to remedy, or to be crushed by legal expenses due in a great measure to needlessly elaborate and technical procedure. They should refuse any longer to permit their rulers to crawl along the path of administrative helplessness and stagnation, or their legislators to climb laboriously the unadvancing treadmill of unchanging laws and uninspired routine.

H. A. D. PHILLIPS,

Bengal Civil Service.

July 1888.

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THE PENAL CODE.

CONTENTS.

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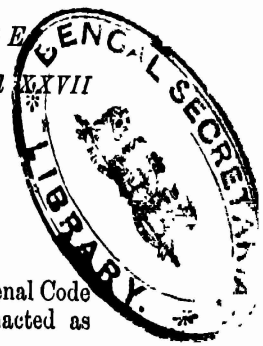
	Page.
CHAPTER I.—Introduction	1
II.—General Explanations	4
III.—Of Punishments	15
IV.—General Exceptions	24
V.—Of Abetment	40
VI.—Of Offences against the State	49
VII.—Of Offences relating to the Army and Navy	55
VIII.—Of Offences against the Public Tranquillity	57
IX.—Of Offences by, or relating to, Public Servants	66
X.—Of Contempts of the lawful authority of Public Servants	71
XI.—Of False Evidence and Offences against Public Justice	78
XII.—Of Offences relating to Coin and Government Stamps	102
XIII.—Of Offences relating to Weights and Measures	111
XIV.—Of Offences affecting the Public Health, Safety, Convenience, Decency and Morals	112
XV.—Of Offences relating to Religion	128
XVI.—Of Offences affecting the Human Body	131
XVII.—Of Offences against Property	174
XVIII.—Of Offences relating to Documents and to Trade or Property-Marks	212
XIX.—Of the Criminal Breach of Contracts of Service	223
XX.—Of Offences relating to Marriage	225
XXI.—Of Defamation	233
XXII.—Of Criminal Intimidation, Insult and Annoyance	242
XXIII.—Of Attempt to commit Offence	248

COMPARATIVE
CRIMINAL JURISPRUDENCE.

VOL. I. PENAL LAW.

THE INDIAN PENAL CODE

Act No. XLV of 1860, *as amended by Acts XIV and XXVII of* 1870; *VIII of* 1882; *and X of* 1886.



CHAPTER I.

INTRODUCTION.

Preamble.

WHEREAS it is expedient to provide a General Penal Code for British India; It is enacted as follows:—

Title and extent of operation of the Code.

1. This Act shall be called THE INDIAN PENAL CODE and shall take effect on and from the first day of May, 1861, throughout the whole of the territories which are or may become vested in Her Majesty by the Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

As to the Indian Penal Code, Sir James Stephen remarks: "It has been triumphantly successful in beating down crime .... Till I had been in India I could not have believed it to be possible that so extensive a body of law could be made so generally known to all whom it concerned in its minutest details. I do not believe that any English lawyer or judge has anything like so accurate and comprehensive and distinct a knowledge of the criminal law of England as average Indian civilians have of the Penal Code. It is hardly an exaggeration to say that they know it by heart. Nor has all the ingenuity of commentators been able to introduce any serious difficulty into the subject. After twenty years use it is still true that any one who wants to know what the criminal law of India is has only to read the Penal Code with a common use of memory and attention."

Experienced Magistrates may think some of the annotations in this book superfluous; but it is the duty of the commentator to protect the clearly expressed intention of the Legislature from the attacks and misrepresentations of pseudo-lawyers, and to prune away, so to speak, the rank overgrowth of case-law; it has been found necessary to do this even in the case of the Code Pénal of France. It is the special duty of the Indian commentator to show that the Code is a distinct entity, to illustrate and interpret one part of it by another, and to construe its provisions according to the fair import of their terms, taken in their usual sense, in connexion with the context, with a view to effect its objects and to promote justice (see New York and Louisiana Codes). It is as well for Magistrates to know the case-law in order to be able to refute at once ingenious pleaders or barristers *on their own ground and with their own weapons.* Injustice is frequently done (by weak Magistrates) in following some cited case, which is not really law. If all our Judges were, like Sir James Fitzjames Stephen, jurists as well as lawyers, there would be fewer failures of justice. The Barrister Judges of the High Courts would doubtless readily admit that their knowledge of Indian criminal law is far inferior to that of a District Magistrate. And yet the proceedings of the latter are revised by them. This is an anomaly which must sooner or later be removed. It has led to chaos in some instances and really nullified the law in one or two particulars. I may instance the case-law under s. 211, P. C., which is not only contradictory and hopelessly confused, but the leading principle of which is directly opposed to the spirit of Indian Criminal Procedure, which enables the Magistrate to take up and institute cases and counter-cases when, as, and in any order, he pleases.

The Indian Penal Code may be described as the criminal law of England freed from most of its technicalities and superfluities. The Code consists of 511 sections; the French Code Pénal contains 484; the German Criminal Code 370, of which a good many are subdivided; and the English Draft Criminal Code of 1879, which related to substantive law, contained 426 sections.

Punishment of offences committed within the said territories.

2. Every person shall be liable to punishment under this Code and not otherwise for every act or omission contrary to the provisions thereof, of which he shall be guilty within the said territories on or after the said first day of May, 1861.

"Within the said territories." Is not a man liable who steals outside British India and brings the property into British India? See s. 410, *infra.* Again, a person may be kidnapped or abducted outside, and brought into, British India. The New York Code specially provides for all such cases. It also makes punishable "all who, being out of this State, cause or aid, advise or encourage, another person to commit any act or be guilty of any neglect within this State which is declared criminal by this Code, and who are afterwards found within this State." See N. Y. P. C., 600.

Generally speaking, there is no limitation for criminal proceedings in India. In England the prosecution for every offence punishable

upon indictment or otherwise than upon summary conviction under 9 Geo. IV., c. 69, must be commenced within six months after the offence. In cases in which no time is specially limited for making a complaint or information in respect of an offence punishable on summary conviction otherwise than under 18 and 19 Vic., c. 126, the complaint must be made or the information laid within six months from the time when the matter thereof arose.—11 and 12 Vic., c. 43, s. 11. *Quære.*—Does this apply to summary convictions for felony? Offences committed in India by official persons employed there must, if prosecuted in England, be prosecuted within six years after the offence committed. See notes under s. 191, C. P. C.

"Every person." Foreign ambassadors are probably exempt from the criminal law to an extent which has never been precisely determined. *Quære.*—How far does it extend to prisoners of war detained against their will, and does it extend to acts done by persons subject to the discipline of foreign ships of war in British harbours or other waters, so long as such acts affect such persons only, and if such persons are not British subjects?

"Under this Code and not otherwise." The criminal law of England extends to every crime, misdemeanour or offence (not amounting to felony—*R.* v. *Shaw*, 5 M. & S., 403) committed by any person employed by or in the service of Her Majesty in any civil or military station, office, capacity, or employment out of Great Britain in the execution or under colour or in the exercise of any such station, office, capacity, or employment. 42 Geo. III., c. 85, s. 1. The Foreign Enlistment Act, 1870, s. 4, applies to every British subject within or without Her Majesty's dominions. The Slave-Trade Act, 1824, s. 9, extends to all persons residing or being within any of Her Majesty's dominions, including India, &c. The 10th section of the same Act seems to apply to all acts done in any part of the world by any person in any of Her Majesty's dominions, or by any British subject, whether in or out of Her Majesty's dominions.—*R.* v. *Zulueta*, 1 C. & K., 215; and see *Santos* v. *Illidge*, 8 C. B. (N. S.), 861. A, a foreigner in England who buys and sells slaves in Brazil, and B, an Englishman in Brazil who buys and sells slaves in Brazil, both appear to be within the section, but the case of B has never been decided definitely.—Steph. Dig., C. P. C., 8, 11, 12. The 57th section of the offences against the Person Act, 1861 (relating to bigamy), extends to marriages contracted by Her Majesty's subjects in any part of the world, and to marriages contracted in England or Ireland by any person already validly married in any part of the world. The word "marriage" in this article does not include connections avowedly polygamous.—*Ibid*, 13.

Punishment of offences committed beyond, but which by law may be tried within, the territories.

3. Any person liable, by any law passed by the Governor-General of India in Council, to be tried for an offence committed beyond the limits of the said territories, shall be dealt with according to the provisions of this Code for any act com-

mitted beyond the said territories, in the same manner as if such act had been committed within the said territories.

Punishment of offences committed by a servant of the Queen within a foreign allied State.

4. Every servant of the Queen shall be subject to punishment under this Code for every act or omission contrary to the provisions thereof, of which he, whilst in such service, shall be guilty on or after the said first day of May, 1861, within the dominions of any Prince or State in alliance with the Queen, by virtue of any treaty or engagement heretofore entered into with the East India Company, or which may have been or may hereafter be made in the name of the Queen by any Government of India.

Certain laws not to be affected by this Act.

5. Nothing in this Act is intended to repeal, vary, suspend, or affect any of the provisions of the Statute 3 and 4 William IV, Chapter 85, or of any Act of Parliament passed after that Statute in anywise affecting the East India Company, or the said territories, or the inhabitants thereof; or any of the provisions of any Act for punishing mutiny and desertion of officers and soldiers in the service of Her Majesty; or of any special or local law. c

Section 101 of the Mutiny Act does not deprive the civil (as opposed to military) Courts of jurisdiction over British soldiers committing offences within the territorial limits of those Courts, nor render the exercise of their jurisdiction dependent upon the sanction of the Commander-in-Chief. The section is merely permissive of a military trial being held.—I. L. R., 5 Cal., 124.

CHAPTER II.

GENERAL EXPLANATIONS.

Definitions in the Code to be understood subject to exceptions.

6. Throughout this Code every definition of an offence, every penal provision, and every illustration of every such definition or penal provision, shall be understood subject to the exceptions contained in the chapter entitled 'General Exceptions,' though those exceptions are not repeated in such definition, penal provision, or illustration.

Illustrations.

(*a.*) The sections in this Code, which contain definitions of offences, do not express that a child under seven years of age cannot commit such offences; but the definitions are to be understood subject to the general

exception which provides that nothing shall be an offence which is done by a child under seven years of age.

(*b.*) A, a Police-officer, without warrant, apprehends Z, who has committed murder. Here A is not guilty of the offence of wrongful confinement; for he was bound by law to apprehend Z, and therefore the case falls within the general exception which provides that "nothing is an offence which is done by a person who is bound by law to do it."

The New York Code abolishes the rule of the common law that penal statutes are to be strictly construed. "All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice."—N. Y. C., 10. Similarly the Louisiana Penal Code abolishes the distinction between a favourable and unfavourable construction of laws. "Penal laws are to be construed according to the plain import of their words, taken in their usual sense, in connexion with the context, and with reference to the matter of which they treat."—Lou. Penal Code, 4.

Expression once explained is used in the same sense throughout the Code.

7. Every expression which is explained in any part of this Code, is used in every part of this Code in conformity with the explanation.

'Gender.'

8. The pronoun 'he' and its derivatives are used of any person, whether male or female.

'Number.'

9. Unless the contrary appears from the context, words importing the singular number include the plural number, and words importing the plural number include the singular number.

'Man.'

10. The word 'man' denotes a male human being of any age.

'Woman.'

The word 'woman' denotes a female human being of any age.

'Person.'

11. The word 'person' includes any Company or Association or body of persons, whether incorporated or not.

'Public.'

12. The word 'public' includes any class of the public or any community.

'Queen.'

13. The word 'Queen' denotes the Sovereign for the time being of the United Kingdom of Great Britain and Ireland.

'Servant of the Queen.'

14. The words 'servant of the Queen' denote all officers or servants continued, appointed, or employed in India by or under the authority of the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better government of India," or by or under the authority of the Government of India or any Government.

'British India.'

15. The words 'British India' denote the territories which are or may become vested in Her Majesty by the said Statute 21 and 22 Victoria, Chapter 106, entitled "An Act for the better government of India," except the Settlement of Prince of Wales' Island, Singapore, and Malacca.

'Government of India.'

16. The words 'Government of India' denote the Governor-General of India in Council, or, during the absence of the Governor-General of India from his Council, the President in Council, or the Governor-General of India alone as regards the powers which may be lawfully exercised by them or him respectively.

'Government.'

17. The word 'Government' denotes the person or persons authorized by law to administer executive Government in any part of British India.

'Presidency.'

18. The word 'Presidency' denotes the territories subject to the Government of a Presidency.

'Judge.'

19. The word 'Judge' denotes not only every person who is officially designated as a Judge, but also every person who is empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, or a judgment which, if not appealed against, would be definitive, or a judgment which, if confirmed by some other authority, would be definitive, or who is one of a body of persons which body of persons is empowered by law to give such a judgment.

Illustrations.

(*a*) A Collector exercising jurisdiction in a suit under Act X of 1859, is a Judge.

(*b.*) A Magistrate exercising jurisdiction in respect of a charge on which he has power to sentence to fine or imprisonment, with or without appeal, is a Judge.

(*c.*) A member of a panchayat which has power, under Regulation VII, 1816, of the Madras Code, to try and determine suits, is a Judge.

(*d.*) A Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial to another Court, is not a Judge.

'Court of Justice.'

20. The words 'Court of Justice' denote a Judge who is empowered by law to act judicially alone, or a body of Judges which is empowered by law to act judicially as a body, when such Judge or body of Judges is acting judicially.

Illustration.

A panchayat acting under Regulation VII, 1816, of the Madras Code, having power to try and determine suits, is a Court of Justice.

'Public servant.'

21. The words 'public servant' denote a person falling under any of the descriptions hereinafter following, namely—

First.—Every covenanted servant of the Queen;

Second.—Every commissioned officer in the Military or Naval Forces of the Queen while serving under the Government of India, or any Government;

Third—Every Judge;

Fourth.—Every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person especially authorized by a Court of Justice to perform any of such duties;

Fifth.—Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

Sixth.—Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any other competent public authority;

Seventh.—Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

Eighth.—Every officer of Government whose duty it is, as such officer, to prevent offences, to give information of

offences, to bring offenders to justice, or to protect the public health, safety or convenience;

Ninth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property on behalf of Government, or to make any survey, assessment, or contract on behalf of Government, or to execute any revenue process, or to investigate, or to report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to the pecuniary interests of Government, or to prevent the infraction of any law for the protection of the pecuniary interests of Government, and every officer in the service or pay of Government, or remunerated by fees or commission for the performance of any public duty;

Tenth.—Every officer whose duty it is, as such officer, to take, receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate, or keep any document for the ascertaining of the rights of the people of any village, town or district.

Illustration.

A Municipal Commissioner is a public servant.

Explanation 1.—Persons falling under any of the above descriptions are public servants, whether appointed by the Government or not.

Explanation 2.—Wherever the words 'public servant' occur, they shall be understood of every person who is in actual possession of the situation of a public servant, whatever legal defect there may be in his right to hold that situation.

'Moveable property.'

22. The words 'moveable property' are intended to include corporeal property of every description, except land and things attached to the earth, or permanently fastened to anything which is attached to the earth.

'Wrongful gain.'

23. 'Wrongful gain' is gain by unlawful means of property to which the person gaining is not legally entitled.

'Wrongful loss.'

'Wrongful loss' is the loss by unlawful means of property to which the person losing it is legally entitled.

'Wrongful gain' includes wrongful retention of property.

A person is said to gain wrongfully when such person retains wrongfully, as well as when such person acquires wrongfully.

'Wrongful loss' includes the being wrongfully kept out of property.

A person is said to lose wrongfully when such person is wrongfully kept out of any property, as well as when such person is wrongfully deprived of property.

'Dishonestly.'

24. Whoever does any thing with the intention of causing wrongful gain to one person, or wrongful loss to another person, is said to do that thing 'dishonestly.'

'Fraudulently.'

25. A person is said to do a thing 'fraudulently' if he does that thing with intent to defraud, but not otherwise.

See notes under ss. 463, 464, *infra*.

'Reason to believe.'

26. A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing, but not otherwise.

Property in possession of wife, clerk or servant.

27. When property is in the possession of a person's wife, clerk or servant, on account of that person, it is in that person's possession within the meaning of this Code.

Explanation.—A person employed temporarily or on a particular occasion in the capacity of a clerk or servant, is a clerk or servant within the meaning of this section.

See notes under s. 378, *infra*.

The interpretation of criminal possession in the English Statutes relating to forgery, coinage offences, &c., is wider. "Having in custody or possession includes, not only the having it by himself in his personal custody or possession, but also the knowingly and wilfully having it in the actual custody or possession of any other person, and also the knowingly and wilfully having it in any dwelling-house, field, &c., open or enclosed, whether belonging to or occupied by himself or not, and whether such thing or matter shall be so had for his own use or benefit, or for that of any other person." See sections 235, 256, 266, 472, 485, *infra*. Indian Magistrates and Judges should know thoroughly the treatise on possession by Savigny.

"The possession of articles of dress or ornament, which are personally used by minor children, who are not of sufficient discretion

to know the value of property, is the possession of the parent or guardian; therefore, such property fraudulently taken, although with the consent of the child, is theft."—Lou. P. C., 647.

'Counterfeit.'

28. A person is said to 'counterfeit,' who causes one thing to resemble another thing, intending by means of that resemblance to practise deception, or knowing it to be likely that deception will thereby be practised.

Explanation.—It is not essential to counterfeiting that the imitation should be exact.

'Document.'

29. The word 'document' denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1.—It is immaterial by what means, or upon what substance, the letters, figures, or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice or not.

Illustrations.

A writing expressing the terms of a contract which may be used as evidence of the contract, is a document.

A check upon a banker is a document.

A power-of-attorney is a document.

A map or plan which is intended to be used, or which may be used, as evidence, is a document.

A writing containing directions or instructions is a document.

Explanation 2.—Whatever is expressed by means of letters, figures or marks, as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures, or marks within the meaning of this section, although the same may not be actually expressed.

Illustration.

A writes his name on the back of a bill-of-exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is, that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words 'pay to the holder,' or words to that effect, had been written over the signature.

'Valuable security.'

30. The words 'valuable security' denote a document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished, or releas-

ed, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right.

Illustration.

A writes his name on the back of a bill-of-exchange. As the effect of this endorsement is to transfer the right to the bill to any person who may become the lawful holder of it, the endorsement is a 'valuable security.'

A statement of account, in which a balance is admitted to be due, is a valuable security.—2 Mad. H. C. Rep., 247.

Where the prisoner tore up such an account, which was in his handwriting, *held* that he was properly convicted under s. 477 of the Penal Code.

'A will.'

31. The words 'a will' denote any testamentary document.

Words referring to acts include illegal omissions.

32. In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions.

'Act.'

'Omission.'

33. The word 'act' denotes as well a series of acts as a single act.

The word 'omission' denotes as well a series of omissions as a single omission.

Liability for act done by several persons in furtherance of common intention.

34. When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.

Where two persons, after being refused a supply of beer at a prohibited hour, broke into the public-house, demanding to be supplied, and fought with the publican, one of them stabbing him with a sharp instrument, it was held that both were guilty of murder. (*R.* v. *Willoughby*, East, P. C., 288.) Where Lord Dacre *agreed* with several persons to hunt in another's park for deer, and *to kill all who might resist*, one of the party having killed the keeper, all were held guilty of the murder, though Lord Dacre at the moment was a quarter of a mile distant, and knew nothing of the individual blow. (*Dacre's case*, Mo., 86; Palm., 35.) So where several were engaged in stealing; in beating another; and in smuggling.

Paterson says that the reason why all are deemed guilty in such cases is, that the presence of accomplices gives encouragement, support, and protection to the person actually committing the act. See s. 149, *infra*. But it is necessary that the murder should naturally flow out of the prosecution of the common purpose. In estimating the joint guilt of several persons engaged in a common illegal

design, care must always be taken to distinguish whether the murderous act was committed in furtherance of such design, for otherwise the guilt of the murder will fall on the individual whose hand effected it; and those associated with him, though in some cases chargeable with manslaughter, will not be guilty of murder. (*R.* v. *Franz*, 2 F. & F., 580; *R.* v. *Borthwick*, 1 Dougl., 207.)

When such an act is criminal by reason of its being done with a criminal knowledge or intention.

35. Whenever an act, which is criminal only by reason of its being done with a criminal knowledge or intention, is done by several persons, each of such persons who joins in the act with such knowledge or intention, is liable for the act in the same manner as if the act were done by him alone with that knowledge or intention.

Effect caused partly by act and partly by omission.

36. Wherever the causing of a certain effect, or an attempt to cause that effect, by an act or by an omission, is an offence, it is to be understood that the causing of that effect partly by an act and partly by an omission is the same offence.

Illustration.

A intentionally causes Z's death, partly by illegally omitting to give Z food, and partly by beating Z. A has committed murder.

Co-operation by doing one of several acts constituting an offence.

37. When an offence is committed by means of several acts, whoever intentionally co-operates in the commission of that offence by doing any one of those acts, either singly or jointly with any other person, commits that offence.

Illustrations.

(*a.*) A and B agree to murder Z by severally, and at different times, giving him small doses of poison. A and B administer the poison according to the agreement with intent to murder Z. Z dies from the effects of the several doses of poison so administered to him. Here A and B intentionally co-operate in the commission of murder, and as each of them does an act by which the death is caused, they are both guilty of the offence, though their acts are separate.

(*b.*) A and B are joint jailors, and as such have the charge of Z, a prisoner, alternately for six hours at a time. A and B, intending to cause Z's death, knowingly co-operate in causing that effect by illegally omitting, each during the time of his attendance, to furnish Z with food supplied to them for that purpose. Z dies of hunger. Both A and B are guilty of the murder of Z.

(*c.*) A, a jailor, has the charge of Z, a prisoner. A, intending to cause Z's death, illegally omits to supply Z with food, in consequence of which Z is much reduced in strength, but the starvation is not sufficient to cause his death. A is dismissed from his office, and B succeeds him. B,

without collusion or co-operation with A, illegally omits to supply Z with food, knowing that he is likely thereby to cause Z's death. Z dies of hunger. B is guilty of murder; but as A did not co-operate with B, A is guilty only of an attempt to commit murder.

Several persons engaged in the commission of a criminal act may be guilty of different offences.

38. Where several persons are engaged or concerned in the commission of a criminal act, they may be guilty of different offences by means of that act.

Illustration.

A attacks Z under such circumstances of grave provocation that his killing of Z would be only culpable homicide not amounting to murder. B, having ill-will towards Z, and intending to kill him, and not having been subject to the provocation, assists A in killing Z. Here, though A and B are both engaged in causing Z's death, B is guilty of murder, and A is guilty only of culpable homicide.

'Voluntarily.'

39. A person is said to cause an effect 'voluntarily' when he causes it by means whereby he intended to cause it, or by means which, at the time of employing those means, he knew or had reason to believe to be likely to cause it.

Illustration.

A sets fire, by night, to an inhabited house in a large town, for the purpose of facilitating a robbery, and thus causes the death of a person. Here A may not have intended to cause death, and may even be sorry that death has been caused by his act, yet, if he knew that he was likely to cause death, he has caused death voluntarily.

'Offence.'

40. Except in the chapter and sections mentioned in clauses two and three of this section, the word 'offence' denotes a thing made punishable by this Code.

In Chapter IV and in the following sections, namely, sections 64, 65, 66, 67, 71, 109, 110, 112, 114, 115, 116, 117, 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389, and 445, the word 'offence' denotes a thing punishable under this Code, or under any special or local law as hereinafter defined.

And in sections 141, 176, 177, 201, 202, 212, 216, and 441, the word 'offence' has the same meaning when the thing punishable under the special or local law is punishable under such law with imprisonment for a term of six months or upwards, whether with or without fine.

'Offence' denotes a thing made punishable, &c. Section 65 of the French Penal Code enacts that no crime, delict, or contravention can

be excused or the punishment lessened, except in the cases specified in the Code. The Court of Cassation ruled (27th April, 1866) that a contravention (police offence) cannot be excused on the ground of absence of criminal intention; nor under the pretext of an ancient and general usage. With reference to the latter, I once had a man before me for stealing fruit, and he pleaded that it was the custom in the district to commit thefts on one particular day in the year. No doubt there had been such a custom, though it was dying out. See Belg. P. C., 78. See notes under s. 378, *infra*.

'Special law.' 41. A 'special law' is a law applicable to a particular subject.

'Local law.' 42. A 'local law' is a law applicable only to a particular part of British India.

'Illegal.' 43. The word 'illegal' is applicable to every thing which is an offence, or which is prohibited by law, or which furnishes ground for a civil action:

'Legally bound to do.' And a person is said to be 'legally bound to do' whatever it is illegal in him to omit.

In Stephen's Digest the words "Unlawful Act" include—
(i) acts punishable as crimes or involving penalties;
(ii) acts constituting actionable wrongs;
(iii) acts contrary to public policy, or morality, or injurious to the public.

'Injury.' 44. The word 'injury' denotes any harm whatever illegally caused to any person, in body, mind, reputation, or property.

'Life.' 45. The word 'life' denotes the life of a human being, unless the contrary appears from the context.

'Death.' 46. The word 'death' denotes the death of a human being, unless the contrary appears from the context.

'Animal.' 47. The word 'animal' denotes any living creature other than a human being.

'Vessel.' 48. The word 'vessel' denotes anything made for the conveyance by water of human beings or of property.

'Year,' 'Month.'

49. Wherever the word 'year' or the word 'month' is used, it is to be understood that the year or the month is to be reckoned according to the British calendar.

'Section.'

50. The word 'section' denotes one of those portions of a chapter of this Code which are distinguished by prefixed numeral figures.

'Oath.'

51. The word 'oath' includes a solemn affirmation substituted by law for an oath, and any declaration required or authorized by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not.

'Good faith.'

52. Nothing is said to be done or believed in good faith, which is done or believed without due care and attention.

CHAPTER III.

OF PUNISHMENTS.

Punishment.

53. The punishments to which offenders are liable under the provisions of this Code are—

First,—Death;
Secondly,—Transportation;
Thirdly,—Penal servitude;
Fourthly,—Imprisonment, which is of two descriptions, namely:
(1) Rigorous, that is, with hard labour.
(2) Simple.
Fifthly,—Forfeiture of property;
Sixthly,—Fine.

In Germany, prisoners sentenced to reclusion or imprisonment for a long term may, provided their conduct has been good, obtain their release on the expiry of three-fourths of the full term. The release is provisional, and may be revoked in case of misconduct.—G. P. C., 23, 24. The sentence of reclusion deprives the person sentenced of the right to serve in the army or navy, or to exercise any public functions. The offices of Advocate, Attorney, Notary, Juror, and Alderman are considered as public. Such a sentence (and also a sentence of imprisonment exceeding three months) may carry with it deprivation of civil rights.—*Ib.*, 31, 32.

In France and Belgium, in certain cases, extracts from the judgment are posted up in the chief town of the department in which the

case is tried, in the commune in which the crime is committed, and in that where the condemned person lives.—Fr. P. C., 36 ; Belg. P. C., 18.

Civic degradation is also a punishment. It consists of (1) exclusion of the condemned person from all public offices : (2) deprivation of the right to vote, to wear any decoration, and generally of all civic and political rights : (3) incapacity to be sworn as an expert, to witness documents, or to depose in a Court of Justice except for the purpose of giving simple information : (4) incapacity to be tutor, curator, &c. : (5) deprivation of the right to carry arms, to belong to the national guard, to serve in the French armies, to keep or be employed in any school, &c.—Fr. P. C., 34; Belg. P. C., 31.

In France, the Court may in certain cases order that the judgment be posted up in such places as it may direct, and that it be inserted in whole or in part in such newspapers as it may direct.

Nothing is said in the Indian Law regarding the punishment of being looked after by the police. Such matters are regulated by police departmental rules and circulars. The absence of any distinct provisions of law often causes excessive friction between the District Magistrate and his District Superintendent of Police. The omission should be rectified by the Legislature, or at least power to frame rules should be distinctly delegated by law to the Inspector-General of Police. These matters are provided for by the codes of other countries. In France, the effect of placing a convicted person under police surveillance (la surveillance de la haute police) gives the Government the right to forbid his going to certain places after his release. The prisoner must declare, fifteen days before his release, where he intends to reside ; if he fails to do so, the Government fixes a place for him, and the prisoner cannot leave such place until after the expiry of six months. He may then change his residence to any place not prohibited, provided he informs the Mayor eight days beforehand. He must remain the full period of six months in each of the places chosen by him from time to time, unless he obtains special permission to the contrary from the Minister of the Interior or the Prefects. Every released convict receives a passport (feuille de route), prescribing a certain route and the duration of the stay to be made in each place on the way; and he must appear before the Mayor of the commune, in which he intends to reside, within 24 hours after his arrival. Disobedience to any of the above provisions subjects him to imprisonment not exceeding five years. The duration of police surveillance cannot exceed 20 years. The Court sentencing the offender may direct that he be not subjected to police supervision, or may reduce the term of such supervision. The supervision dates from the day of release. Such supervision may be remitted, reduced, or suspended by executive order (par mesure administrative).—Fr. P. C., 44, seqq.

Recidivists are liable to higher punishment on the commission of second offences. But a man is not considered a recidivist, if more than 3 years have elapsed since his release from prison.

In New York, imprisonment in a state prison for any term less than life suspends all civil rights, and forfeits all public offices, and all private trusts, authority or power of the person sentenced. Imprisonment for life involves civil death.—N. Y. P. C., 757. Suspension and forfeiture of political or civil rights appear to be punishments in all the American and Continental Penal Codes.

"Simple imprisonment consists simply in the confinement of the person within the walls of the prison, the prisoner being debarred neither the use of books, nor the means of writing, nor the society of such persons as may desire to see him during the hours established by the general regulations for the prison."—Lou. P. C., 92. This is similar to the treatment of a first class misdemeanant in England; but in India, we have no equivalent, though the District Magistrate (representing the executive) can relax jail discipline in suitable cases and for sufficient grounds.

The Louisiana Procedure Code contains some useful rules, regarding the exercise of the discretionary power given to the court in the selection and apportionment of punishments. "Laws apparently equal in their provisions become unequal and unjust if indiscriminately applied, without modification, to all who become subject to their operation. A difference of physical force or moral feelings, in several culprits, may render the same punishment light to one, which would be intolerable to another."—Art. 431.

Circumstances which ought to enhance punishment are (1) the frequency of the offence: (2) the wealth of the offender. Some of those which are to be considered in alleviation are (1) the minority of the offender: (2) the old age of the offender: (3) the condition of the offender, *e. g.*, wife, apprentice: (4) the order of a superior military officer: (5) when the offence was committed under a combination of circumstances, and under the influence of motives which may not probably recur either with respect to the offender or to any other: (6) when offence has been caused by great provocation: (7) the state of health and the sex of the delinquent must be considered in the nature and duration of imprisonment.

The medium punishment is that which is intended for the first offence, when it is not attended by any circumstance of aggravation or extenuation: but if the party, convicted for the first offence, have previously sustained a good character, and that offence be the only one of *any nature* that he has committed, these are motives for lessening the punishment.

The following are to be considered as circumstances of aggravation: (1) if the person committing the offence was, by his office or condition, obliged to prevent it: (2) if he held any other public office: (3) if his education, fortune, profession placed him in a situation in which his example would probably influence the conduct of others: (4) when the offence was committed with premeditation: (5) or in consequence of a plan formed with others: (6) when the defendant endeavoured to induce others to join in committing the offence: (7) when a trust was broken, or such trust afforded easier means of committing the offence: (8) when, in the commission of the offence, any other injury was offered than that necessarily suffered by the offence itself; such as, wanton cruelty, or humiliating language, in cases of personal injury: (9) when it was attended with the breach of any other moral duty than that necessarily broken in committing the offence; such as personal injury accompanied by ingratitude: (10) when the injury was offered to one whose age, sex, office, conduct, or condition entitled him to respect from the offender: (11) when the injury was offered to one whose age, sex, or infirmity rendered him incapable of resistance: (12) when the general character of the defendant is marked by those

passions or vices which generally lead to the commission of the offence of which he has been convicted.—Arts. 431—435.

Commutation of sentence of death.

54. In every case in which sentence of death shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for any other punishment provided by this Code.

Commutation of sentence of transportation for life.

55. In every case in which sentence of transportation for life shall have been passed, the Government of India or the Government of the place within which the offender shall have been sentenced may, without the consent of the offender, commute the punishment for imprisonment of either description for a term not exceeding fourteen years.

Europeans and Americans to be sentenced to penal servitude instead of transportation.

56. Whenever any person being a European or American is convicted of an offence punishable under this Code with transportation, the Court shall sentence the offender to penal servitude, instead of transportation, according to the provisions of Act XXIV of 1855.

Proviso as to sentence for term exceeding ten years, but not for life.

Provided that, where a European or American offender would, but for such Act, be liable to be sentenced or ordered to be transported for a term exceeding ten years, but not for life, he shall be liable to be sentenced or ordered to be kept in penal servitude for such term exceeding six years as to the Court seems fit, but not for life.

Fractions of terms of punishment.

57. In calculating fractions of terms of punishment, transportation for life shall be reckoned as equivalent to transportation for twenty years.

Offenders sentenced to transportation how to be dealt with until transportation.

58. In every case in which a sentence of transportation is passed, the offender, until he is transported, shall be dealt with in the same manner as if sentenced to rigorous imprisonment, and shall be held

to have been undergoing his sentence of transportation during the term of his imprisonment.

In what cases transportation may be awarded instead of imprisonment.

59. In every case in which an offender is punishable with imprisonment for a term of seven years or upwards, it shall be competent to the Court which sentences such offender, instead of awarding sentence of imprisonment, to sentence the offender to transportation for a term not less than seven years, and not exceeding the term for which by this Code such offender is liable to imprisonment.

Sentence may be (in certain cases of imprisonment) wholly or partly rigorous or simple.

60. In every case in which an offender is punishable with imprisonment which may be of either description, it shall be competent to the Court which sentences such offender to direct in the sentence that such imprisonment shall be wholly rigorous, or that such imprisonment shall be wholly simple, or that any part of such imprisonment shall be rigorous and the rest simple.

Sentence of forfeiture of property.

61. In every case in which a person is convicted of an offence for which he is liable to forfeiture of all his property, the offender shall be incapable of acquiring any property, except for the benefit of Government, until he shall have undergone the punishment awarded, or the punishment to which it shall have been commuted, or until he shall have been pardoned.

Illustration.

A, being convicted of waging war against the Government of India, is liable to forfeiture of all his property. After the sentence, and whilst the same is in force, A's father dies, leaving an estate which, but for the forfeiture, would become the property of A. The estate becomes the property of Government.

Forfeiture of property in respect of offenders punishable with death, transportation, or imprisonment.

62. Whenever any person is convicted of an offence punishable with death, the Court may adjudge that all his property, moveable and immoveable, shall be forfeited to Government; and whenever any person shall be convicted of any offence for which he shall be transported, or sentenced to

imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment shall be forfeited to Government, subject to such provision for his family and dependants as the Government may think fit to allow during such period.

Amount of fine.

63. Where no sum is expressed to which a fine may extend, the amount of fine to which the offender is liable is unlimited, but shall not be excessive.

"The fine shall not be excessive." Indian Magistrates often impose fines quite disproportionate to the means of the offender. The Lou. P. C., 90, enacts that "a pecuniary fine shall in no case exceed one-fourth part of the value of the property, real and personal, of the person on whom it is imposed; and such person may, in all cases, have the fine reduced to that amount, on showing the true value of his property to the satisfaction of the Court; in which case the Court must commute the part of the fine deducted into imprisonment, calculating one day's imprisonment for every two dollars deducted from the fine."

Sentence of imprisonment in default of payment of fine.

64. In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment,

and in every case of an offence punishable with imprisonment or fine, or with fine only, in which the offender is sentenced to a fine,

it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced, or to which he may be liable under a commutation of a sentence.

Limit of term of imprisonment for default in payment of fine, when the offence is punishable with imprisonment as well as fine.

65. The term for which the Court directs the offender to be imprisoned, in default of payment of a fine, shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.

See s. 33, Criminal Procedure Code.

66. The imprisonment which the Court imposes in default of payment of a fine may be of any description to which the offender might have been sentenced for the offence.

Description of imprisonment for such default.

67. If the offence be punishable with fine only, the imprisonment which the Court imposes in default of payment of the fine shall be simple, and the term for which the Court directs the offender to be imprisoned, in default of payment of fine, shall not exceed the following scale, that is to say, for any term not exceeding two months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four months when the amount shall not exceed one hundred rupees, and for any term not exceeding six months in any other case.

Term of imprisonment for default in payment of fine, when the offence is punishable with fine only.

Under the Small Penalties' Act in England, if the sum including costs does not exceed ten shillings, no longer imprisonment than seven days is lawful; if not exceeding one pound, fourteen days; if not exceeding two pounds, one month; and if not exceeding five pounds, two months.—28 and 29 Vict., c. 127. But the penalties for breach of Inland Revenue Acts are excepted from this Act. There is no fixed limit in respect of higher sums than £5. In those cases where no mode of enforcing payment of penalties or sums of money is specified, or no mode other than distress is specified, but where distress is insufficient, then the Justices may commit the defendant to jail for a period not exceeding three months, whatever may be the amount of the penalty or sum to be paid.—11 and 12 Vict., c. 43, s. 22. For India, see General Clauses Act I, 1868, s. 5.

68. The imprisonment which is imposed in default of payment of a fine shall terminate whenever that fine is either paid or levied by process of law.

Such imprisonment to terminate upon payment of the fine.

69. If, before the expiration of the term of imprisonment fixed in default of payment, such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid, the imprisonment shall terminate.

Termination of such imprisonment upon payment of proportional part of fine.

Illustration.

A is sentenced to a fine of one hundred rupees, and to four months' imprisonment in default of payment. Here, if seventy-five rupees of

42-15

the fine be paid or levied before the expiration of one month of the imprisonment, A will be discharged as soon as the first month has expired. If seventy-five rupees be paid or levied at the time of the expiration of the first month, or at any later time while A continues in imprisonment, A will be immediately discharged. If fifty rupees of the fine be paid or levied before the expiration of two months of the imprisonment, A will be discharged as soon as the two months are completed. If fifty rupees be paid or levied at the time of the expiration of those two months, or at any later time while A continues in imprisonment, A will be immediately discharged.

70. The fine, or any part thereof which remains unpaid, may be levied at any time within six years after the passing of the sentence, and if, under the sentence, the offender be liable to imprisonment for a longer period than six years, then at any time previous to the expiration of that period;

Fine may be levied within six years, or at any time during the term of imprisonment.

And the death of the offender does not discharge from the liability any property which would, after his death, be legally liable for his debts.

Death of offender not to discharge his property from liability.

Under the Louisiana Penal Code, 89, the death of the offender operates as an immediate discharge of all pecuniary fines imposed upon him, even if execution has issued and sale been ordered.

71. Where anything which is an offence is made up of parts, any of which parts is itself an offence, the offender shall not be punished with the punishment of more than one of such his offences, unless it be so expressly provided;

Limit of punishment of offence which is made up of several offences.

where anything is an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, or

where several acts, of which one or more than one would by itself or themselves constitute an offence, constitute, when combined, a different offence,

the offender shall not be punished with a more severe punishment than the Court which tries him could award for any one of such offences.

Illustrations.

(*a.*) A gives Z fifty strokes with a stick. Here A may have committed the offence of voluntarily causing hurt to Z by the whole beating, and also by each of the blows which make up the whole beating. If A were liable to punishment for every blow, he might be imprisoned for fifty years, one for each blow. But he is liable only to one punishment for the whole beating.

(*b.*) But if, while A is beating Z, Y interferes, and A intentionally strikes Y, here, as the blow given to Y is no part of the act whereby A voluntarily causes hurt to Z, A is liable to one punishment for voluntarily causing hurt to Z, and to another for the blow given to Y.

Section 365 of the French Code of Criminal Procedure enacts that, when an accused is convicted of several crimes or delicts, the most severe punishment for any one shall alone be awarded. But the Court of Cassation has ruled that the prohibition of cumulation of punishments does not extend to infractions which are offences by the sole fact of their commission, and are not excused by the good faith of their authors.—Cass., 17th May, 1851. For instance, a man might be prosecuted in one trial for three separate infractions of an excise license, or for executing two or more unstamped documents. Decided, moreover, that the rule of cumulation is not applicable to Forest delicts (Cass., 6th May, 1847) or police contraventions (*Ib.*, 28th September, 1865 ; 13th April and 21st June, 1866).

Punishment of a person found guilty of one of several offences, the judgment stating that it is doubtful of which.

72. In all cases in which judgment is given that a person is guilty of one of several offences specified in the judgment, but that it is doubtful of which of these offences he is guilty, the offender shall be punished for the offence for which the lowest punishment is provided if the same punishment is not provided for all.

Solitary confinement.

73. Whenever any person is convicted of an offence for which under this Code the Court has power to sentence him to rigorous imprisonment, the Court may, by its sentence, order that the offender shall be kept in solitary confinement for any portion or portions of the imprisonment to which he is sentenced, not exceeding three months in the whole, according to the following scale, that is to say—

A time not exceeding one month if the term of imprisonment shall not exceed six months.

A time not exceeding two months if the term of imprisonment shall exceed six months and shall not exceed one year.

A time not exceeding three months if the term of imprisonment shall exceed one year.

Limit of solitary confinement.

74. In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time, with intervals between the periods of solitary confinement of not less duration than such periods; and

when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods.

Punishment of persons convicted, after a previous conviction, of an offence punishable with three years' imprisonment.

75. Whoever, having been convicted of an offence punishable under Chapter XII or Chapter XVII of this Code with imprisonment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of those Chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life, or to imprisonment of either description for a term which may extend to ten years.

CHAPTER IV.

GENERAL EXCEPTIONS.

Act done by a person bound, or by mistake of fact believing himself bound by law.

76. Nothing is an offence which is done by a person who is, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it.

Illustrations.

(*a.*) A, a soldier, fires on a mob by the order of his superior officer in conformity with the commands of the law. A has committed no offence.

(*b.*) A, an officer of a Court of Justice, being ordered by that Court to arrest Y, and, after due enquiry, believing Z to be Y, arrests Z. A has committed no offence.

As to ignorance of law, article 33 of Stephen's Digest is as follows :— "The fact that an offender is ignorant of the law is in no case an excuse for his offence, but it may be relevant to the question whether an act which would be a crime if accompanied by a certain intention or other state of mind, and not otherwise, was in fact accompanied by that intention or state of mind or not. A, a foreigner unacquainted with the law of England, kills B in a duel in England. A's act is murder, although he may have supposed it to be lawful. A, a poacher, sets wires for game, which are taken by B, a game-keeper, under the authority of an Act of Parliament (5 Anne, c. 14, s. 4), of the existence

of which A is ignorant. His ignorance of the act is relevant to the question whether he took the wires under a claim of right.—*It.* v. *Hall*, 3 C. & P., 409.

It is no defence on behalf of a foreigner charged in England with a crime committed there, that he did not know he was doing wrong, the act not being an offence in his own country. But though it is not a defence in law, yet it is a matter to be considered in mitigation of punishment.—*It.* v. *Esop*, 7 C. & P., 456.

77. Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law.

Act of Judge when acting judicially.

78. Nothing which is done in pursuance of, or which is warranted by the judgment or order of a Court of Justice, if done whilst such judgment or order remains in force, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believes that the Court had such jurisdiction.

Act done pursuant to the judgment or order of a Court of Justice.

79. Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith believes himself to be justified by law, in doing it.

Act done by a person justified, or by mistake of fact believing himself justified, by law.

Illustration.

A sees Z commit what appears to A to be a murder. A, in the exercise, to the best of his judgment, exerted in good faith, of the power which the law gives to all persons of apprehending murderers in the fact, seizes Z in order to bring Z before the proper authorities. A has committed no offence, though it may turn out that Z was acting in self-defence.

See s. 99, *infra*.

80. Nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner, by lawful means, and with proper care and caution.

Accident in the doing of a lawful act.

Illustration.

A is at a work with a hatchet; the head flies off and kills a man who is standing by. Here, if there was no want of proper caution on the part of A, his act is excusable and not an offence.

In China accident absolves from the regular punishment; but "all persons who kill or wound others purely by accident shall be permitted to redeem themselves from the punishment of killing or wounding in an affray by the payment in each case of a fine to the family of the person deceased or wounded. By a case of pure accident is understood a case of which no sufficient previous warning could have been given, either directly, by the perceptions of sight and hearing, or indirectly, by the inferences drawn by judgment and reflection."—Chinese P. C., 292.

The following examples are taken from Stephen's Digest: A, a schoolmaster, corrects a scholar in a manner not intended or likely to injure him, using due care. The scholar dies. Such a death is accidental (1 Hale, 473). A turns B, a trespasser, out of his house, using no more force than is necessary for that purpose. B resists, but without striking A. They fall in the struggle, and B is killed. Such a death is accidental (founded on Foster, 262). A takes up a gun, *not knowing whether it is loaded or not*, points it in sport at B, and pulls the trigger. B is shot dead. Such a death is not accidental (Foster, 263).

If a man, intending to kill a thief or housebreaker in self-defence, by mistake kills one of his own family, this is a mere accident or act of God.—1 Hale, P. C., 42.

Homicide by accident or misadventure used in early English law to be punishable by forfeiture of goods and chattels. Coke, Hale, and Blackstone try to explain this away by saying that, though it is but a man's misfortune, yet the king has lost a subject by the accident, and the man who caused the accident ought to have been more careful. Hence he forfeited his goods to the king by way of taking greater care. But a statute of George IV. treated these attempts to put the best face on a bad law as valueless, and repealed the law altogether, setting the case on its right footing as one of mere accident and carrying blame to none. The Indian law inserts the words "with proper care and caution." If there is no deficiency in reasonable care and forethought, and the facts fail to involve such fault or negligence as forms the ingredient of manslaughter, the act is not punishable; as where a driver in the dark drives over a person; a sportsman shoots at something moving, and not suspected to be a human creature; a gun goes off when examining it; a child is being reasonably corrected, but by some unforeseen calculation the stroke proves fatal.

24 and 25 Vict., c. 100, s. 7, enacts that "no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune or in his own defence, or in any other manner without felony."

Act likely to cause harm, but done without a criminal intent, and to prevent other harm.

81. Nothing is an offence merely by reason of its being done with the knowledge that it is likely to cause harm, if it be done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property.

Explanation.—It is a question of fact in such a case whether the harm to be prevented or avoided was of such

a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

Illustrations.

(*a.*) A, the Captain of a steam-vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that before he can stop his vessel, he must inevitably run down a boat, B. with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur risk of running down a boat, C, with only two passengers on board, which he may possibly clear. Here, if A alters his course without any intention to run down the boat C. and in good faith for the purpose of avoiding the danger to the passengers in the boat B, he is not guilty of an offence, though he may run down the boat C by doing an act which he knew was likely to cause that effect, if it be found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C.

(*b.*) A in a great fire pulls down houses in order to prevent the conflagration from spreading. He does this with the intention, in good faith, of saving human life or property. Here, if it be found that the harm to be prevented was of such a nature and so imminent as to excuse A's act, A is not guilty of the offence.

Where two shipwrecked persons get upon the same plank, and one thrusts the other off under the urgent apprehension that both cannot be saved, the law seems to support the unscrupulous instinct of self-preservation, and holds this justifiable. Bac. Max., 5 ; 4 Bl. Com., 186; 1 Hawk, c. 28, s. 26. The legislature has expressly made it felony to unlawfully and maliciously prevent or impede another from saving his life from shipwreck.—24 and 25 Vict., c. 100, s. 17. But it is agreeable to the spirit of the common law to hold him blameless who drowns the other in order to save his own life ; for the law cannot appreciate or understand any of the higher motives of conduct, and the inherent selfishness of human nature leads each to prefer his own life to that of everyone else. But see note under s. 302, *infra*.

Act of a child under 7 years of age.

82. Nothing is an offence which is done by a child under seven years of age.

Act of a child above 7 and under 12 years of age, who has not sufficient maturity of understanding.

83. Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

The age in England is over seven and under fourteen.

Under the English Summary Jurisdiction Act of 1879 a "child" means a person who in the opinion of the Court is under the age of 12 years. "Young person" means a person over 12 and under 16. "Adult" means a person of the age of 16 years or upwards.

"No person shall be convicted of any offence committed when under nine years of age ; nor of any offence when between nine and

fifteen years of age, unless it shall appear by proof to the jury that he had sufficient understanding to know the nature and illegality of the act which constituted the offence."—Lou. P. C., 29.

In China, offenders under fifteen or over seventy, or who are disabled by the loss of an eye or a limb, may redeem any punishment (other than capital) by the payment of an established fine. If under ten or over eighty years, or totally disabled by the loss of both eyes or two limbs, offenders even in capital cases (except treason) are recommended to the particular consideration and decision of his Imperial Majesty. Offenders under seven or over ninety shall not suffer punishment in any case, except treason or rebellion.—China P. C., 22.

In Germany persons under twelve cannot be prosecuted, but they may be submitted to measures of correction and supervision, and may be confined in houses of education or correction.—G. P. C., 55.

In England a boy under fourteen is held incapable in law of committing rape, or an assault with intent to commit rape, *R.* v. *Groomridge*, 7 C. & P., 582 ; and the same rule applies to the offence of carnally knowing a girl under ten. No evidence of the individual capacity of a boy under that age is allowed to be given. But he may be guilty of aiding and assisting others to commit the offence.—1 Hale, 630.

By the Criminal Code of the German Empire a person cannot be criminally prosecuted for any offence committed before he has completed his twelfth year. From twelve to eighteen he may be acquitted if when he committed the offence he did not possess the intelligence requisite to know that it was punishable. According to the French Code Pénal, "Lorsque l' accusé aura moins de seize ans, s' il est decidé qu' il a agi *sans discernement*, il sera acquitté." If he has acted "*avec discernement*" his punishment is to be mitigated according to a fixed scale. There is no age at which a child is absolutely exempt from punishment.

In Italy, if a minor of 14 years or less has acted without discernment, he is not liable to any punishment. But in the case of crimes and delicts, the Court may make him over to his parents, on condition of their watching his conduct and bringing him up carefully under penalty of damages, and, if necessary, of a fine of 150 francs ; or it may order his confinement in a public workshop.—Ital. P. C., 88.

Act of a person of unsound mind.

84. Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

Every person is presumed to be sane ; and to be responsible for his acts.—*R.* v. *Oxford*, 9 C. & P., 525 ; *R.* v. *Stokes*, 3 C. & K., 185.

Quære.—Must all the exceptions in this chapter be established beyond a reasonable doubt ? *Held*, in California, that an accused is bound to establish a defence of insanity by such a preponderance of evidence that, if the question were submitted to a jury in a civil case, they would find him insane.—61 Cal., 246. To prove the defendant insane, the history of his life was searched, his moral nature and traits being presented to show that acts done by him could only

be accounted for by insanity—*Held*, that it was competent to show in rebuttal, particular acts and conduct, contemporaneous with the history produced on his part, tending to show that his real moral nature did not call for the explanation of insanity.—*United States* v. *Guiteau*, 1 Mackey (District of Columbia), 498.

Act of a person incapable of judgment by reason of intoxication caused against his will.

85. Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

Offence requiring a particular intent or knowledge committed by one who is intoxicated.

86. In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

The English law on this point would appear to be different. A drunken person is scarcely in a state to entertain an intent at all, either malicious or not. It can scarcely be said that a man who is drunk can entertain that kind of malice which is the chief ingredient of the crime of murder, and proceeds from a mind possessed of firmness of purpose. Though, therefore, drunkenness will not be any excuse for crime, yet if in the condition of the prisoner malice cannot be presumed, he can only be found guilty of manslaughter.—*R.* v. *Thomas*, 7 C. & P., 817; *R.* v. *Cruse*, 8 C. & P., 546.

If an act is done in a fit of delirium tremens caused by voluntary drunkenness, the act is not a crime.—1 Hale, P. C., 32-33. But these facts would probably bring the case under s. 84. Drunkenness is no excuse, but delirium tremens caused by drinking, and differing from drunkenness, if it produces such a degree of madness, even for a time, as to render a person incapable of distinguishing right from wrong, relieves him from criminal responsibility.—*Reg.* v. *Davis*, 14 Cox, C. C., 563.

Held, in Georgia, that a charge that voluntary drunkenness affords no excuse for crime, but with the addition that the drunkenness might be considered by the jury, like any fact, to shed light on the transaction, was quite as favourable to the defendant, charged with murder, as he could claim.—68 Ga., 612.

The fact of drunkenness may, owing to the particular circumstances of a case, rebut the inference of malice.—*R.* v. *Meakin*, 7 C. & P., 297. The Judge's remark was perhaps an *obiter dictum*: "If the

prisoner had only used a stick instead of a dangerous weapon *as he did*, you would not have inferred a malicious intent against him, if drunk, so strongly as you would, if he had used a different kind of weapon." The true English distinction, which the Indian Penal Code expressly negatives, is clearly stated in Stephen's Digest. Though drunkenness is no excuse, it may be taken into account by the jury, when considering the motive or intent of a person acting under its influence.—*R.* v. *Gamlen*, 1 F. & F., 90.

Act not intended and not known to be likely to cause death or grievous hurt, done by consent.

87. Nothing which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

Illustration.

A and Z agree to fence with each other for amusement. This agreement implies the consent of each to suffer any harm which, in the course of such fencing, may be caused without foul play; and if A, while playing fairly, hurts Z, A commits no offence.

Act not intended to cause death, done by consent in good faith for the benefit of a person.

88. Nothing which is not intended to cause death is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

Illustration.

A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under a painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

Stephen (Digest, 209) says it is uncertain to what extent any person has a right to consent to his being put in danger of death or bodily harm by the act of another. A, with B's consent, wheels B in a barrow along a tight-rope at a great height from the ground. C hires A and B to do so; D, E, and F pay money to C to see the performance.

B is killed. *Quære.*—Are A, C, D, E, and F, or any and which of them, guilty of manslaughter?

89. Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to that person: Provided—

Act done in good faith for the benefit of a child or person of unsound mind, by or by consent of guardian.

First.—That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustration.

A, in good faith, for his child's benefit, without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

90. A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception—or

Consent known to be given under fear or misconception.

If the consent is given by a person who, from unsoundness of mind or intoxication, is unable to understand the nature and consequence of that to which he gives his consent; or, unless the contrary appears from the context, if the consent is given by a person who is under twelve years of age.

Consent of a child or person of unsound mind.

91. The exceptions in sections 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Acts which are offences independently of harm caused to the person consenting, are not within the exceptions in sections 87, 88 and 89.

Illustration.

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore it is not an offence 'by reason of such harm;' and the consent of the woman or her guardian to the causing of such miscarriage does not justify the act.

92. Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person's consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit: Provided—

Act done in good faith for the benefit of a person without consent.

First.—That this exception shall not extend to the intentional causing of death, or the attempting to cause death;

Secondly.—That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt, or the curing of any grievous disease or infirmity;

Thirdly.—That this exception shall not extend to the voluntary causing of hurt, or to the attempting to cause hurt, for any purpose other than the preventing of death or hurt;

Fourthly.—That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

Illustrations.

(*a.*) Z is thrown from his horse, and is insensible. A, a surgeon, finds that Z requires to be trepanned. A, not intending Z's death, but in good faith, for Z's benefit, performs the trepan before Z recovers his power of judging for himself. A has committed no offence.

(*b.*) Z is carried off by a tiger. A fires at the tiger, knowing it to be likely that the shot may kill Z, but not intending to kill Z, and, in good

faith, intending Z's benefit. A's ball gives Z a mortal wound. A has committed no offence.

(*c.*) A, a surgeon, sees a child suffer an accident which is likely to prove fatal unless an operation be immediately performed. There is not time to apply to the child's guardian. A performs the operation in spite of the entreaties of the child, intending in good faith, the child's benefit. A has committed no offence.

(*d.*) A is in a house which is on fire, with Z, a child. People below hold out a blanket. A drops the child from the house-top, knowing it to be likely that the fall may kill the child, but not intending to kill the child, and intending, in good faith, the child's benefit. Here, even if the child is killed by the fall, A has committed no offence.

Explanation.—Mere pecuniary benefit is not benefit within the meaning of sections 88, 89 and 92.

Communication made in good faith.

93. No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration.

A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.

Act to which a person is compelled by threats.

94. Except murder and offences against the State, punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint.

Explanation 1.—A person who, of his own accord, or by reason of a threat of being beaten, joins a gang of dacoits knowing their character, is not entitled to the benefit of this exception, on the ground of his having been compelled by his associates to do anything that is an offence by law.

Explanation 2.—A person seized by a gang of dacoits and forced, by threat of instant death, to do a thing which is an offence by law, for example, a smith compelled to take his tools and to force the door of a house for the dacoits to enter and plunder it, is entitled to the benefit of this exception.

The presumption that a married woman acts under the coercion of her husband when she commits an offence in his presence, finds no

place in the Indian Code. In Stephen's Digest it is pointed out that this presumption may be rebutted; that it does not apply to high treason or murder, and probably not to robbery; that it seems to apply to misdemeanours generally.

As regards a murderer being a free agent, Paterson says: "Lord Hale has said that the person assailed with the threat ought rather to die himself than kill an innocent person."—1 Hale, 51. But others hold that by analogy to the case of treason being committed under compulsion or fear of present death, in which case the treason is extenuated, so it ought to be in a case where death of a third party is caused under the fear that otherwise the perpetrator will himself be murdered.—1 East, P. C., c. 2, s. 15; c. 5, s. 61. The defence that one person killed another to save his own life must always be scrutinised with rigour in favour of the innocent third party; and should such a defence ever be made, it is difficult to see how the law could treat such homicide as less than manslaughter. And yet the case of the two shipwrecked persons on a plank makes even this doubtful." See note under s. 81, *supra*. The matter has since been decided in the *Mignonette case*. See note under s. 302, *infra*.

"A married woman committing an offence by the command or persuasion of her husband, shall suffer no greater punishment than simple imprisonment for one-half of the time to which she would have been sentenced, if she had committed the offence without such command or persuasion. Living together at the time and general reputation of marriage, shall be sufficient to reduce the punishment of the reputed wife. But offences punishable by imprisonment for life are excepted from the operation of this article."—Lou. P. C., 31-32. The Louisiana Penal Code makes apprehension of loss of life *or limb* sufficient, provided the person threatened made every endeavour which could be made by any man of common courage to resist or escape from the power of the person using the threats, and that the act was done while he was in the presence of the person using the threats or violence, and during the continuance of the same.—Lou. P. C., 40.

Act causing slight harm.

95. Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

This section embodies the maxim "De minimis non curat lex."

In *Rex* v. *Bingley* (5 Carr. & P., 602) the property taken was a slip of paper containing a memorandum of a debt due to the person robbed. *Held*, the offence was robbery; the prosecutor showed, by carrying the memorandum in his pocket, that he considered it of some value. See note under s. 30, *supra*.

Nothing done in private defence is an offence.

96. Nothing is an offence which is done in the exercise of the right of private defence.

OF THE RIGHT OF PRIVATE DEFENCE.

Right of private defence of the body and of property.

97. Every person has a right, subject to the restrictions contained in section 99, to defend—

First—His own body, and the body of any other person, against any offence affecting the human body;

Secondly—The property, whether moveable or immoveable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or which is an attempt to commit theft, robbery, mischief, or criminal trespass.

Paterson says that the true criterion of whether one who holds possession of property can use force to defend such possession is not solely that in strictness of law he is entitled to such possession, but the main test is as to his *being for the time in peaceable possession.* If the latter has no right to continue in such possession, the owner must resort to the legal remedy appropriate to the case, and can rarely use force to recover such possession even of what is his own; at least, if he does so, he may be opposed with still greater force, and must take the consequences. Yet there are many cases, where the possessor having *not a colour of title* to maintain his possession, and the real owner having given him *no colour of acquiescence*, may be ejected with force, and even though a breach of the peace is committed thereby.

Right of private defence against the act of a person of unsound mind, &c.

98. When an act, which would otherwise be a certain offence, is not that offence by reason of the youth, the want of maturity of understanding, the unsoundness of mind, or the intoxication of the person doing that act, or by reason of any misconception on the part of that person, every person has the same right of private defence against that act which he would have if the act were that offence.

Illustrations.

(*a.*) Z, under the influence of madness, attempts to kill A; Z is guilty of no offence. But A has the same right of private defence which he would have if Z were sane.

(*b.*) A enters by night a house which he is legally entitled to enter. Z, in good faith, taking A for a house-breaker, attacks A. Here Z, by attacking A under this misconception, commits no offence. But A has the same right of private defence against Z, which he would have if Z were not acting under that misconception.

Acts against which there is no right of private defence.

99. *First.*—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted

to be done, by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

Secondly.—There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done, by the direction of a public servant acting in good faith under colour of his office, though that direction may not be strictly justifiable by law.

Thirdly.—There is no right of private defence in cases in which there is time to have recourse to the protection of the public authorities.

Fourthly.—The right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

Extent to which the right may be exercised.

Explanation 1.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by a public servant, as such, unless he knows, or has reason to believe, that the person doing the act is such public servant.

Explanation 2.—A person is not deprived of the right of private defence against an act done, or attempted to be done, by the direction of a public servant, unless he knows, or has reason to believe, that the person doing the act is acting by such direction; or unless such person states the authority under which he acts, or, if he has authority in writing, unless he produces such authority, if demanded.

In *Mackally's case* (mentioned in Coke's Rep., pt. 9, 65b) it was held that if a minister of justice, sheriff, magistrate, constable or watchman is killed in the execution of process, it is murder, although such process is apparently erroneous. See notes under s. 353, P. C.

Under s. 53 of the German Penal Code, excess of the right of private defence is not punishable, if the person has exceeded the limits of such defence through trouble, fear or terror. This is a very important provision of law.

In England when a warrant has been issued to apprehend a person for an offence less than felony, the police-officer who executes it must have the warrant in his possession at the time of arrest; otherwise if the person sought to be arrested should assault the officer in such a case, he cannot be convicted on an indictment charging him with assaulting the officer in the execution of his duty.—*Codd* v. *Cabe*, L. R., 1 Ex. Div., 352; *Galliard* v. *Laxton*, 31 L. J., M. C., 123. But it would be rash to say that every degree of violence is lawful in the case of unlawful arrest. In *Galliard* v. *Laxton*, Wightman, J., pointed out that the charge was not one of felony, but rather in the nature of a civil than a criminal-proceeding.—2 B. & S., 363.

If the person to be arrested so requires, the police-officer must show the warrant. See s. 80, C. P. C.

"Acting in good faith." These words cut the Gordian knot of many difficulties. In a case that happened in England, a constable of one London parish arrested a woman in another parish at Covent Garden, which he had no authority to do. Certain by-standers, utter strangers to the woman, attempted to rescue her, and the constable's assistant was killed by them. Seven judges against five held that this was not murder, for there was sufficient provocation to reduce the offence to manslaughter. Lord Holt, the leader of the majority of the judges, was carried away by a fine enthusiasm, and said: "If one be imprisoned upon unlawful authority, it is a sufficient provocation to all people out of compassion, *much more (!) when it is done under colour of justice*, and when the liberty of the subject it invaded. It is a provocation to all the subjects of England; a man ought to be concerned for Magna Charta and the laws; and if any officer against law imprison a man, he is an offender against Magna Charta." The absurdity of this reasoning lay in the fact that the by-standers did not know whether the constable was or was not justified in arresting. Many years later Sir M. Foster ridiculed the decision, which, indeed, was deserving of ridicule: "The prisoners saw a woman, a perfect stranger to them, led to the Round House under a charge of a criminal nature. This upon evidence at the Old Bailey a month or two afterwards cometh out to be illegal imprisonment; a violation of Magna Charta! And these ruffians are presumed to have been seized all on a sudden with a strong fit of zeal for Magna Charta, and in this frenzy to have drawn on the constable and stabbed his assistant."—Fost. Cr. C., 316.

When the right of private defence of the body extends to causing death.

100. The right of private defence of the body extends, under the restrictions mentioned in the last preceding section, to the voluntary causing of death or of any other harm to the assailant, if the offence which occasions the exercise of the right be of any of the descriptions hereinafter enumerated, namely—

First—Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault;

Secondly—Such an assault as may reasonably cause the apprehension that grievous hurt will otherwise be the consequence of such assault;

Thirdly—An assault with the intention of committing rape;

Fourthly—An assault with the intention of gratifying unnatural lust;

Fifthly—An assault with the intention of kidnapping or abducting;

Sixthly—An assault with the intention of wrongfully confining a person, under circumstances which may reason-

ably cause him to apprehend that he will be unable to have recourse to the public authorities for his release.

It will be seen that adultery is not included in the category. The killing of an adulterer caught in the act by a husband generally falls under s. 300, Exc. 1, *vide infra*. If a man kills another caught in adultery with his wife, it is manslaughter.—*R.* v. *Manning*, T. Raym., 212; *R.* v. *Maddy*, 1 Vent., 158; a like view was acted on where a parent slew one detected in a kindred offence with a child—*R.* v. *Fisher*, 8 C. & P., 182. But mere suspicion of adultery, though well-grounded, will not constitute any adequate provocation, and it will be murder, should death be so caused—*R.* v. *Kelly*, 2 C. & K., 814. Paterson remarks:—"As civilisation advances, and remedies of divorce become improved, there is less justification than ever for this leniency in the law towards such an outbreak of ungovernable fury in the circumstances described."

Held, in California, that it is error to instruct a jury that, in order to justify one in killing another in self-defence, it must appear that in order to save his own life, or prevent his receiving great bodily harm, the killing was absolutely necessary—58 Cal., 249. Upon a trial for manslaughter in Kentucky, the jury were told, in effect, that defendant had no right to shoot in self-defence, unless his life was endangered. *Held*, error; that he might have been justified in shooting if in imminent danger of great bodily harm only.—79 Ky., 461.

When such right extends to causing any harm other than death.

101. If the offence be not of any of the descriptions enumerated in the last preceding section, the right of private defence of the body does not extend to the voluntary causing of death to the assailant, but does extend, under the restrictions mentioned in section 99, to the voluntary causing to the assailant of any harm other than death.

Commencement and continuance of the right of private defence of the body.

102. The right of private defence of the body commences as soon as a reasonable apprehension of danger to the body arises from an attempt or threat to commit the offence, though the offence may not have been committed; and it continues as long as such apprehension of danger to the body continues.

Held, in Kentucky, that A is not justified in killing B, unless there are circumstances to show that B was then and there about to harm A. Proof that B had formerly threatened to kill A, had lain in wait, and had shot at A.—*Held*, insufficient.—78 Ky., 102.

When the right of private defence of property extends to causing death.

103. The right of private defence of property extends, under the restrictions mentioned in section 99, to the voluntary causing of death or of any other harm to the wrong-doer, if the offence, the com-

mitting of which, or the attempting to commit which, occasions the exercise of the right be an offence of any of the descriptions hereinafter enumerated, namely—

First—Robbery;

Secondly—House-breaking by night;

Thirdly—Mischief by fire committed on any building, tent or vessel, which building, tent or vessel is used as a human dwelling or as a place for the custody of property;

Fourthly—Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension that death or grievous hurt will be the consequence, if such right of private defence is not exercised.

When such right extends to causing any harm other than death.

104. If the offence, the committing of which, or the attempting to commit which, occasions the exercise of the right of private defence be theft, mischief, or criminal trespass, not of any of the descriptions enumerated in the last preceding section, that right does not extend to the voluntary causingof death, but does extend, subject to the restrictions mentioned in section 99, to the voluntary causing to the wrong-doer of any harm other than death.

Commencement and continuance of the right of private defence of property.

105. *First.*—The right of private defence of property commences when a reasonable apprehension of danger to the property commences.

Secondly.—The right of private defence of property against theft continues till the offender has effected his retreat with the property or the assistance of the public authorities is obtained, or the property has been recovered.

Thirdly.—The right of private defence of property against robbery continues as long as the offender causes or attempts to cause to any person death or hurt or wrongful restraint, or as long as the fear of instant death or of instant hurt or of instant personal restraint continues.

Fourthly.—The right of private defence of property against criminal trespass or mischief continues as long as the offender continues in the commission of criminal trespass or mischief.

Fifthly.—The right of private defence of property against house-breaking by night continues as long as the house-tres-

pass which has been begun by such house-breaking continues.

As to the defence of property, the Louisiana P. C., 511, enacts: "Every man has a right to his legal possession of property; he is not bound to yield it to the force of any invaders. If, therefore, anyone attempt by illegal force to deprive another of property, either real or personal, in his *actual, corporal, and legal possession*; the legal and actual possessor may defend his possession by a *force proportioned* to that with which it is attacked. . . . *The possession must be actual and not merely constructive.*" The italics are mine. I think these words truly represent the Indian law.

Right of private defence against a deadly assault when there is risk of harm to an innocent person.

106. If, in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk.

Illustration.

A is attacked by a mob who attempt to murder him. He cannot effectually exercise his right of private defence without firing on the mob, and he cannot fire without risk of harming young children who are mingled with the mob. A commits no offence if by so firing he harms any of the children.

CHAPTER V.

OF ABETMENT.

Abetment of a thing.

107. A person abets the doing of a thing, who—

First—Instigates any person to do that thing; or,

Secondly—Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or,

Thirdly—Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

Illustration.

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully

represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Declarations of a conspirator, made after the consummation of the conspiracy, and not in pursuance of it, are not admissible against a confederate.—13 Tex., App., 211.

"Intentionally aids." Defendant gave to A powders which would enable him—so defendant said—to debauch any woman. A proceeded to B's house with intent to debauch his girls, and hid under their bed, but was discovered and driven from the house. *Held*, that defendant could not be convicted of conspiracy to commit rape.—88 N. C., 627.

Proof of the fact of a conspiracy need not always be shewn before evidence is admissible of acts and declarations of defendant's co-conspirators, when the proof of the conspiracy consists of numerous and independent circumstances.—12 Tex., App., 65.

The French Penal Code has a special section (61) which is far wider than the Indian law: "Those who habitually furnish lodging, a place of retreat, or of meeting, to persons whom they know to be engaged in acts of brigandage or violence against the safety of the state, the public peace, private persons or property, are punishable as their accomplices."—Cf. Belg. P. C., 68.

M was indicted under 24 and 25 Vict., c. 100, s. 4. The encouragement and endeavour to persuade to murder, proved at the trial, were the publication and circulation by him of an article, written in German in a newspaper published in that language in London, exulting in the recent murder of the Emperor of Russia, and commending it as an example to revolutionists throughout the world. The jury were directed that if they thought that by the publication of the article M did intend to, and did, encourage or endeavour to persuade any person to murder any other person, whether a subject of Her Majesty or not, and whether within the Queen's dominions or not, and that such encouraging and endeavouring to persuade was the natural and reasonable effect of the article, they should find him guilty—*Held*, by a full Court, that such a direction was correct, and that the publication and circulation of a newspaper article might be an encouragement or endeavour to persuade to murder, within s. 4 of 24 and 25 Vict., c. 100, although not addressed to any person in particular.—*Reg.* v. *Most*, 7 Q. B. D., 244.

The doctrine of the criminal responsibility of a master for the acts of a servant seems to have been carried much further in England than in India. It appears that in England the master is sometimes made criminally responsible for offences by the servant, though not directly proved to have been perpetrated at the master's instigation. The leading case is *Coleman* v. *Riches*, 16 C. B., 118, where JARVIS, C. J., mentions several cases in which a master may become criminally responsible for the act of his servant, provided it is done in the ordinary scope of the servant's employment. Of this nature would be convictions under the Excise Act in India. In the

case of *Att.-Gen.* v. *Siddons* (1 C. & J., 220), some smuggled tobacco was found in a cellar, and a servant, in his master's absence, procured a permit, by which he intended to protect the goods from seizure. The master was held liable for the penalty attached to the offence of unduly using a permit. The master, being *dominus loci* where the smuggled goods were concealed, was considered to have authorized all offences flowing from the original offence from which he alone could reap any benefit. Where a business is conducted in such a manner as to be a nuisance, a master is liable to be punished, though he has no knowledge of the existence of the nuisance—*R.* v. *Stephens*, L. R., 1 Q. B., 702. It has been held also that under 8 Vict., c. 20, ss. 98, 99, a master is liable to be fined (and therefore it may be presumed in default to be imprisoned) if his servant refuse to give to the Toll Collector on a railway an account or give a false account of goods which he has in charge.

A drove B along a turnpike road for a lawful purpose; the conveyance was stopped, when B got out, entered a field and shot a hare, which he gave to A on returning to the conveyance; and A then drove along the road.—*Held*, that there was evidence on which to convict A of aiding and abetting B to commit the offence of trespass in pursuit of game.—*Stacey* v. *Whitehurst*, 18 C. B., N. S., 344.

Abettor.

108. A person abets an offence who abets either the commission of an offence, or the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be committed, or that the effect requisite to constitute the offence should be caused.

Illustrations.

(*a.*) A instigates B to murder C. B refuses to do so. A is guilty of abetting B to commit murder.

(*b.*) A instigates B to murder D. B, in pursuance of the instigation, stabs D. D recovers from the wound. A is guilty of instigating B to commit murder.

Quære—If the instigation is countermanded, how far is the abettor liable? The following is an illustration in Stephen's Digest: A advises B to murder C, and afterwards, by letter, withdraws his advice. B does murder C. A is not an accessory before the fact if his letter reaches B before he murders C; but he is if it arrives afterwards.

Explanation 3.—It is not necessary that the person abetted should be capable by law of committing an offence,

or that he should have the same guilty intention or knowledge as that of the abettor, or any guilty intention or knowledge.

Illustrations.

(*a.*) A, with a guilty intention, abets a child or lunatic to commit an act which would be an offence if committed by a person capable by law of committing an offence, and having the same intention as A. Here A, whether the act be committed or not, is guilty of abetting an offence.

(*b.*) A, with the intention of murdering Z, instigates B, a child under seven years of age, to do an act which causes Z's death. B, in consequence of the abetment, does the act, and thereby causes Z's death. Here, though B was not capable by law of committing an offence, A is liable to be punished in the same manner as if B had been capable by law of committing an offence and had committed murder, and he is therefore subject to the punishment of death.

(*c.*) A instigates B to set fire to a dwelling-house. B, in consequence of the unsoundness of his mind, being incapable of knowing the nature of the act, or that he is doing what is wrong or contrary to law, sets fire to the house in consequence of A's instigation. B has committed no offence, but A is guilty of abetting the offence of setting fire to a dwelling-house, and is liable to the punishment provided for that offence.

(*d.*) A, intending to cause a theft to be committed, instigates B to take property belonging to Z out of Z's possession. A induces B to believe that the property belongs to A. B takes the property out of Z's possession, in good faith believing it to be A's property. B, acting under this misconception, does not take dishonestly, and therefore does not commit theft. But A is guilty of abetting theft, and is liable to the same punishment as if B had committed theft.

Explanation 4.—The abetment of an offence being an offence, the abetment of such an abetment is also an offence.

Illustration.

A instigates B to instigate C to murder Z. B accordingly instigates C to murder Z, and C commits that offence in consequence of B's instigation. B is liable to be punished for his offence with the punishment for murder; and as A instigated B to commit the offence, A is also liable to the same punishment.

Where A abetted B to steal his master's property, and B took the property with his master's consent in order to procure A's conviction, *held*, that A was guilty of abetment, though no theft had been committed—I. L. R., 4 Calc., 366.

Explanation 5.—It is not necessary to the commission of the offence of abetment by conspiracy that the abettor should concert the offence with the person who commits it. It is sufficient if he engage in the conspiracy in pursuance of which the offence is committed.

Illustration.

A concerts with B a plan for poisoning Z. It is agreed that A shall administer the poison. B then explains the plan to C, mentioning that a third person is to administer the poison, but without mentioning A's

name. C agrees to procure the poison, and procures and delivers it to B for the purpose of its being used in the manner explained. A administers the poison; Z dies in consequence. Here, though A and C have not conspired together, yet C has been engaged in the conspiracy in pursuance of which Z has been murdered. C has therefore committed the offence defined in this section, and is liable to the punishment for murder.

Punishment of abetment if the act abetted is committed in consequence, and where no express provision is made for its punishment.

109. Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

Illustrations.

(*a.*) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(*b.*) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(*c.*) A and B conspire to poison Z. A, in pursuance of the conspiracy, procures the poison and delivers it to B, in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence, and thereby causes Z's death. Here B is guilty of murder. A is guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

Punishment of abetment if the person abetted does the act with a different intention from that of the abettor.

110. Whoever abets the commission of an offence shall, if the person abetted does the act with a different intention or knowledge from that of the abettor, be punished with the punishment provided for the offence which would have been committed if the act had been done with the intention or knowledge of the abettor, and with no other.

Liability of abettor when one act is abetted and a different act is done.

111. When an act is abetted and a different act is done, the abettor is liable for the act done, in the same manner and to the same extent as if he had directly abetted it:

Provided the act done was a probable consequence of the abetment, and was committed under the influence of the instigation, or with the aid or in pursuance of the conspiracy which constituted the abetment.

Proviso.

Illustrations.

(*a.*) A instigates a child to put poison into the food of Z, and gives him poison for that purpose. The child, in consequence of the instigation, by mistake puts the poison into the food of Y, which is by the side of that of Z. Here, if the child was acting under the influence of A's instigation, and the act done was under the circumstances a probable consequence of the abetment, A is liable in the same manner, and to the same extent, as if he had instigated the child to put the poison into the food of Y.

(*b.*) A instigates B to burn Z's house. B sets fire to the house, and at the same time commits theft of property there. A, though guilty of abetting the burning of the house, is not guilty of abetting the theft; for the theft was a distinct act, and not a probable consequence of the burning.

(*c.*) A instigates B and C to break into an inhabited house at midnight for the purpose of robbery, and provides them with arms for that purpose. B and C break into the house, and being resisted by Z, one of the inmates, murder Z. Here, if that murder was the probable consequence of the abetment, A is liable to the punishment provided for murder.

Paterson explains the English law as follows :—"The responsibility of the adviser is limited to the main or substantial point, and only to such things as are the direct and immediate consequence of the advice being acted on, and does not include remote and collateral effects. Thus, where A counsels B to poison C, and C gives part of the poison to D; or if A counsels B to beat C, and B stabs or poisons C, then A will be responsible only for the murder or beating of C and no further—1 Hale, P. C., 431; 2 Hawk, P. C., c. 29, s. 18. Whereas, if A counsel B to poison C, and B stabs or shoots C, A is equally guilty, for it was the death of C that he substantially instigated. Thus, in ascertaining whether the murder was in pursuance of the counsel or instigation, the test is whether the perpetration of the crime as committed was a probable consequence of such counsel."

112. If the act for which the abettor is liable under the last preceding section is committed in addition to the act abetted, and constitutes a distinct offence, the abettor is liable to punishment for each of the offences.

Abettor when liable to cumulative punishment for act abetted and for act done.

Illustration.

A instigates B to resist by force a distress made by a public servant, B, in consequence, resists that distress. In offering the resistance, B voluntarily causes grievous hurt to the officer executing the distress. As B has committed both the offence of resisting the distress and the offence of voluntarily causing grievous hurt, B is liable to punishment

for both these offences; and if A knew that B was likely voluntarily to cause grievous hurt in resisting the distress, A will also be liable to punishment for each of the offences.

Liability of abettor for an effect caused by the act abetted different from that intended by the abettor.

113. When an act is abetted with the intention on the part of the abettor of causing a particular effect, and an act for which the abettor is liable in consequence of the abetment causes a different effect from that intended by the abettor, the abettor is liable for the effect caused, in the same manner and to the same extent as if he had abetted the act with the intention of causing that effect, provided he knew that the act abetted was likely to cause that effect.

Illustration.

A instigates B to cause grievous hurt to Z. B, in consequence of the instigation, causes grievous hurt to Z. Z dies in consequence Here, if A knew that the grievous hurt abetted was likely to cause death, A is liable to be punished with the punishment provided for murder.

Abettor present when offence is committed.

114. Whenever any person who, if absent, would be liable to be punished as an abettor, is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

Abetment of an offence punishable with death or transportation for life, if the offence be not committed in consequence of the abetment.

115. Whoever abets the commission of an offence punishable with death or transportation for life, shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

If an act which causes harm be done in consequence of the abetment.

And if any act for which the abettor is liable in consequence of the abetment, and which causes hurt to any person, is done, the abettor shall be liable to imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Illustration.

A instigates B to murder Z. The offence is not committed. If B has murdered Z, he would have been subject to the punishment of death or transportation for life. Therefore A is liable to imprisonment for a term which may extend to seven years, and also to a fine; and if any

hurt be done to Z in consequence of the abetment, he will be liable to imprisonment for a term which may extend to fourteen years, and to fine.

Abetment of an offence punishable with imprisonment, if the offence be not committed in consequence of the abetment.

116. Whoever abets an offence punishable with imprisonment shall, if that offence be not committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with imprisonment of any description provided for that offence, for a term which may extend to one-fourth part of the longest term provided for that offence, or with such fine as is provided for that offence, or with both;

If the abettor or the person abetted be a public servant whose duty it is to prevent the offence.

And if the abettor or the person abetted is a public servant, whose duty it is to prevent the commission of such offence, the abettor shall be punished with imprisonment of any description provided for that offence, for a term which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations.

(*a*.) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B refuses to accept the bribe. A is punishable under this section.

(*b*.) A instigates B to give false evidence. Here, if B does not give false evidence, A has nevertheless committed the offence defined in this section, and is punishable accordingly.

(*c*.) A, a Police-officer, whose duty it is to prevent robbery, abets the commission of robbery. Here, though the robbery be not committed, A is liable to one-half of the longest term of imprisonment provided for that offence, and also to fine.

(*d*.) B abets the commission of a robbery by A, a Police-officer, whose duty it is to prevent that offence. Here, though the robbery be not committed, B is liable to one-half of the longest term of imprisonment provided for the offence of robbery, and also to fine.

Abetting the commission of an offence by the public, or by more than ten persons.

117. Whoever abets the commission of an offence by the public generally, or by any number or class of persons exceeding ten, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A affixes in a public place a placard, instigating a sect consisting of more than ten members to meet at a certain time and place for the pur-

pose of attacking the members of an adverse sect while engaged in a procession. A has committed the offence defined in this section.

118. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with death or transportation for life, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall—

Concealing a design to commit an offence punishable with death or transportation for life.

If that offence be committed, be punished with imprisonment of either description for a term which may extend to seven years, or,

If the offence be committed.

If the offence be not committed, with imprisonment of either description for a term which may extend to three years: and in either case shall also be liable to fine.

If the offence be not committed.

Illustration.

A, knowing that dacoity is about to be committed at B, falsely informs the Magistrate that a dacoity is about to be committed at C, a place in an opposite direction, and thereby misleads the Magistrate with intent to facilitate the commission of the offence. The dacoity is committed at B in pursuance of the design. A is punishable under this section.

119. Whoever, being a public servant, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence, the commission of which it is his duty as such public servant to prevent, voluntarily conceals by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall—

A public servant concealing a design to commit an offence which it is his duty to prevent.

If the offence be committed, be punished with imprisonment of any description, provided for the offence, for a term which may extend to one-half of the longest term of such imprisonment, or with such fine as is provided for that offence, or with both;

If the offence be committed.

Or, if the offence be punishable with death or transportation for life, with imprisonment of either description for a term which may extend to ten years;

If the offence be punishable with death, &c.

Or, if the offence be not committed, shall be punished with imprisonment of any description provided for the offence, for a term which may extend to one-fourth part of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

If the offence be not committed.

Illustration.

A, an officer of Police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give such information, with intent to facilitate the commission of that offence. Here A has, by an illegal omission, concealed the existence of B's design, and is liable to punishment according to the provision of this section.

120. Whoever, intending to facilitate, or knowing it to be likely that he will thereby facilitate, the commission of an offence punishable with imprisonment, voluntarily conceals, by any act or illegal omission, the existence of a design to commit such offence, or makes any representation which he knows to be false respecting such design, shall—

Concealing a design to commit an offence punishable with imprisonment.

If the offence be committed, be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth; and,

If the offence be committed.

If the offence be not committed, to one-eighth of the longest term of such imprisonment, or with such fine as is provided for the offence, or with both.

If not committed.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

121. Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or transportation for life, and shall forfeit all his property.

Waging, or attempting to wage, war, or abetting the waging of war, against the Queen.

Illustrations.

(*a*.) A joins an insurrection against the Queen. A has committed the offence defined in this section.

(*b*.) A in India abets an insurrection against the Queen's Government of Ceylon by sending arms to the insurgents. A is guilty of abetting the waging of war against the Queen.

"Where persons rise in insurrection with intent to prevent in general by force and intimidation the execution of a statute of this State, or to force its repeal, they are guilty of levying war. But an endeavour although by numbers and force of arms to resist the execution of a law in a single instance, and for a private purpose, is not levying war." —N. Y. P. C., 59. Under this definition, members of the National League in Ireland are guilty of levying war.

Conspiracy to commit offences punishable by section 121.

121*A*. Whoever within or without British India conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or of any part thereof, or conspires to overawe, by means of criminal force or the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years.

Explanation.—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof.

"There is a conspiracy from the moment the resolution to act is concerted and arranged between two or more persons."—Fr. P. C., 89, Belg. P. C., 110.

Collecting arms, &c., with the intention of waging war against the Queen.

122. Whoever collects men, arms or ammunition, or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the Queen, shall be punished with transportation for life or imprisonment of either description for a term not exceeding ten years, and shall forfeit all his property.

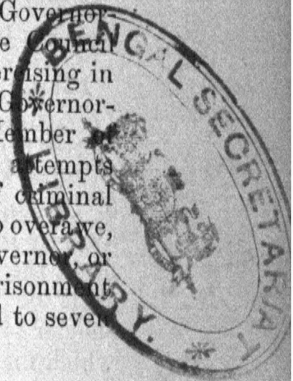
"Arms." The French Penal Code on the same subject enacts that "knives, pocket-knives, and pen-knives will only be considered as arms if they have *actually been used* for the purpose of killing, wounding, or striking."—Fr. P. C., 101.

Concealing with intent to facilitate a design to wage war.

123. Whoever by any act, or by any illegal omission conceals the existence of a design to wage war against the Queen, intending by such concealment to facilitate, or knowing it to be likely that such concealment will facilitate, the waging of such war, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

124. Whoever, with the intention of inducing or compelling the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor or a Member of the Council of the Governor-General of India, or of the Council of any Presidency, to exercise or refrain from exercising in any manner any of the lawful powers of such Governor-General, Governor, Lieutenant-Governor, or Member of Council, assaults or wrongfully restrains, or attempts wrongfully to restrain or overawes, by means of criminal force or the show of criminal force, or attempts so to overawe, such Governor-General, Governor, Lieutenant-Governor, or Member of Council, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Assaulting Governor-General, Governor, &c., with intent to compel or restrain the exercise of any lawful power.



In 1661 a statute was passed in England to check tumultuous petitioning. This Act enacts that no one shall solicit the consent of more than twenty persons to a petition to the King or either House of Parliament for alteration of matters established by law in church or State, unless the matter thereof have been first consented to or ordered by three justices of the peace, or the grand jury at assizes or quarter sessions, or in London by the common council, and no person shall present any petition accompanied by more than ten persons under a penalty of £100 and three months' imprisonment (13 Ch. II, st. 1, c. 5). This Act is still in force; but, though it prohibits the soliciting of more than twenty signatures to a petition, yet it does not punish those above that number who actually sign. It is difficult both in England and in India to guard against fraudulent practices used in procuring, or even forging signatures, in order to enhance the importance of the petition. The Houses of Parliament treat as a breach of privilege the act of those who set down without authority the name of any other person to a petition, and have sometimes committed to prison the perpetrators of such a fraud.

124*A*. Whoever, by words either spoken or intended to be read, or by signs, or by visible representation or otherwise, excites or attempts to excite feelings of disaffection to the Government established by law in British India, shall be punished with transportation for life or for any term, to which fine may be added, or with imprisonment for a term which may extend to three years, to which fine may be added, or with fine.

Exciting disaffection.

Explanation.—Such a disapprobation of the measures of the Government as is compatible with a disposition to render obedience to the lawful authority of the Govern-

ment and to support the lawful authority of the Government against unlawful attempts to subvert or resist that authority, is not disaffection. Therefore, the making of comments on the measures of the Government, with the intention of exciting only this species of disapprobation, is not an offence within this clause.

Stephen remarks: "The law relating to riots and unlawful assemblies is very full and elaborate, but it is remarkable that the Penal Code contained no provision at all as to seditious offences not involving an absolute breach of the peace. It says nothing of seditious words, seditious libels, seditious conspiracies, or secret societies. The additions made in 1870 (s. 124A is one addition) provide to a certain extent for the punishment of such offences, but they do so very imperfectly. During the rule of the East India Company there was always a reluctance on the part of the Company to behave and to legislate as unqualified sovereigns would naturally behave and legislate, and upon the assumption of the Government by the Crown it was not considered necessary apparently to make any change."

A seditious intention is defined in Stephen's Digest as an intention to bring into hatred or contempt, or to excite disaffection against the person of Her Majesty, &c., or the administration of justice, or to excite Her Majesty's subjects to attempt, otherwise than by lawful means, the alteration of any matter in church or State by law established, or to raise discontent or disaffection amongst Her Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects.—*O'Connell* v. *R.*, 11 Cl. & F., 155, 234.

In England, blasphemous and seditious libels differ from other criminal offences in this that the Secretary of State may issue a warrant to arrest the individual libeller.—*Entinck* v. *Carrington*, 19 St. Tr., 1045; 2 Wils., 275; *Butt* v. *Conant*, 1 B. & B., 566. The Secretary of State may arrest and commit. But there is a more exceptional and expeditious mode which is the filing of a criminal information *ex officio* by the Attorney-General or the Solicitor-General. The Attorney-General can always of his own motion file a criminal information for any misdemeanour, libel included. *Pryan's Case*, 5 Mod., 459. He may also demand a trial at bar instead of before a single Judge.—*R.* v. *Johnson*, 1 Str., 644; and he has the privilege of a reply, though the defendant call no witnesses.—*R.* v. *Horne*, St. Tr., 660. The policy of this mode of prosecuting libels, says Paterson, has had its opponents and defenders, though it is now in point of practice confined to seditious and blasphemous libels. It has been often complained of in Parliament as in its secrecy and swiftness and overwhelming force too nearly akin to despotism, and somewhat out of harmony with a land of liberty, where prosecutions are subject to fixed and well-understood laws. 16 Parl. Hist., 1127. On the other hand it has been urged that the press often acts like an assassin, and must be coped with by weapons which may be nearly as suddenly and energetically used; and that this cannot be done except by confiding a discretion to one, who is bound over to prudence and moderation by all the circumstances of his office, and is too well watched to be likely to abuse it. If

such powers are found necessary in England, how much more necessary are they in India.

Section 131 of the German Penal Code imposes a penalty of two years' imprisonment and a fine of six hundred marks on any person who, with the object of exposing to contempt State institutions or measures of authority, publicly asserts or spreads distorted facts or misrepresentations, knowing them to be so.

Section 201 of the French Penal Code forbids clergymen to criticise or censure, in their sermons or in the exercise of their office, the Government, the laws, or any act of public authority. See Belg. P. C., 268.

Article 110 of the German Penal Code closely resembles some of the articles of the French law of 1819 and punishes with fine and imprisonment up to two years everyone who "publicly before an assembly or by publication or public promulgation or public exhibition of writings or other representations incites to disobedience to the laws or ordinances having the force of law, or orders made by the Government within its competency." Article 111 puts every one who by any of the above-mentioned means incites anyone to an act punishable by law on the same footing as an accessory before the fact. Article 130 punishes everyone who "in any way dangerous to the public peace publicly incites different classes of the population to acts of violence against each other." By article 131 everyone is liable to punishment who "publicly affirms or publishes false or distorted facts, knowing that they are false or distorted, in order thereby to bring into contempt the measures or orders of the Government."

In 1817 the English Legislature thought fit to declare illegal all combinations, societies, and clubs supposed to be secretly at war with the established government, laws and constitution of the Kingdom, and the members of which take unlawful oaths of secrecy; but no prosecution can be commenced without the leave of the Attorney or Solicitor-General.—57 Geo. III., c. 19, s. 30; 9 and 10 Vict., c. 33, s. 1.

Waging war against any Asiatic power in alliance with the Queen.

125. Whoever wages war against the Government of any Asiatic power in alliance or at peace with the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with transportation for life, to which fine may be added, or with imprisonment of either description for a term which may extend to seven years, to which fine may be added, or with fine.

A person commits a misdemeanour in England (33 and 34 Vict., c. 90) if he accepts any appointment in the military or naval service of any foreign State at war with any friendly State, or assists in fitting out any expedition, or builds or despatches any ship, &c.

Committing depredation on the territories of any power at peace with the Queen.

126. Whoever commits depredation, or makes preparations to commit depredation, on the territories of any power in alliance or at peace with the Queen, shall be punished with imprisonment of either description for a term which may extend to seven years,

and shall also be liable to fine and to forfeiture of any property used, or intended to be used, in committing such depredation, or acquired by such depredation.

Receiving property taken by war or depredation mentioned in sections 125 and 126.

127. Whoever receives any property knowing the same to have been taken in the commission of any of the offences mentioned in sections 125 and 126, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine and to forfeiture of the property so received.

Public servant voluntarily allowing prisoner of State or war in his custody to escape.

128. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, voluntarily allows such prisoner to escape from any place in which such prisoner is confined, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Public servant negligently suffering prisoner of State or war in his custody to escape.

129. Whoever, being a public servant, and having the custody of any State prisoner or prisoner of war, negligently suffers such prisoner to escape from any place of confinement in which such prisoner is confined, shall be punished with simple imprisonment for a term which may extend to three years, and shall also be liable to fine.

Aiding escape of, rescuing, or harbouring such prisoner.

130. Whoever knowingly aids or assists any State prisoner or prisoner of war in escaping from lawful custody, or rescues or attempts to rescue any such prisoner, or harbours or conceals any such prisoner who has escaped from lawful custody, or offers or attempts to offer any resistance to the recapture of such prisoner, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A State prisoner or prisoner of war who is permitted to be at large on his parol within certain limits in British India, is said to escape from lawful custody if he goes beyond the limits within which he is allowed to be at large.

CHAPTER VII.

OF OFFENCES RELATING TO THE ARMY AND NAVY.

Abetting mutiny, or attempting to seduce a soldier or sailor from his duty.

131. Whoever abets the committing of mutiny by an officer, soldier or sailor in the Army or Navy of the Queen, or attempts to seduce any such officer, soldier or sailor from his allegiance or his duty, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—In this section the words 'officer' and 'soldier' include any person subject to the Articles of War for the better government of Her Majesty's Army, or to the Articles of War contained in Act No. V of 1869.

Abetment of mutiny, if mutiny is committed in consequence thereof.

132. Whoever abets the committing of mutiny by an officer, soldier or sailor in the Army or Navy of the Queen, shall, if mutiny be committed in consequence of that abetment, be punished with death or with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetment of an assault by a soldier or sailor, on his superior officer, when in the execution of his office.

133. Whoever abets an assault by an officer, soldier or sailor in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Abetment of such assault if the assault is committed.

134. Whoever abets an assault by an officer, soldier or sailor in the Army or Navy of the Queen, on any superior officer being in the execution of his office, shall, if such assault be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

135. Whoever abets the desertion of any officer, soldier or sailor in the Army or Navy of the Queen, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Abetment of the desertion of a soldier or sailor.

136. Whoever, except as hereinafter excepted, knowing or having reason to believe that an officer, soldier or sailor in the Army or Navy of the Queen has deserted, harbours such officer, soldier or sailor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Harbouring a deserter.

Exception.—This provision does not extend to the case in which the harbour is given by a wife to her husband.

137. The master or person in charge of a merchant vessel, on board of which any deserter from the Army or Navy of the Queen is concealed, shall, though ignorant of such concealment, be liable to a penalty not exceeding five hundred rupees, if he might have known of such concealment but for some neglect of his duty as such master or person in charge, or but for some want of discipline on board of the vessel.

Deserter concealed on board merchant vessel through negligence of master.

138. Whoever abets what he knows to be an act of insubordination by an officer, soldier or sailor in the Army or Navy of the Queen, shall, if such act of insubordination be committed in consequence of that abetment, be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Abetment of act of insubordination by a soldier or sailor.

139. No person subject to any Articles of War for the Army or Navy of the Queen, or for any part of such Army or Navy, is subject to punishment under this Code for any of the offences defined in this chapter.

Persons subject to Articles of War not punishable under this Code.

Wearing the dress of a soldier.

140. Whoever, not being a soldier in the Military or Naval service of the Queen, wears any garb, or carries any token resembling any garb or token used by such a soldier, with the intention that it may be believed that he is such a soldier, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

Unlawful assembly.

141. An assembly of five or more persons is designated an 'unlawful assembly,' if the common object of the persons composing that assembly is—

First.—To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any public servant in the exercise of the lawful power of such public servant; or

Second.—To resist the execution of any law, or of any legal process; or

Third.—To commit any mischief or criminal trespass, or other offence; or

Fourth.—By means of criminal force, or show of criminal force to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth.—By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

The appellants assembled with others for a lawful purpose, and with no intention of carrying it out unlawfully, but with the knowledge that their assembly would be opposed, and with good reason to suppose that a breach of the peace would be committed by those who

opposed it.—*Held*, that they could not be rightly convicted of an unlawful assembly.—*Beatty* v. *Gillbanks*, 9 Q. B. D., 308. See ss. 97, 104, P. C., *supra*. Defence of *actual* peaceable possession of land is not an offence, if the right of private defence be not exceeded.

"An unlawful assembly is an assembly of three or more persons with intent to aid each other by violence, or illegally to deprive any person of the enjoyment of a right."—Lou. P. C., 209.

An unlawful assembly is an assembly of five or more persons, if their common object is to commit an offence. Under the French and Belgian Penal Codes every association of evil-doers against person or property is a crime against the public peace. The only proof required is of the mere fact of organisation, or of correspondence between the members and their leaders, or of agreements for the division of stolen property, &c. Proof of any one of such facts renders the members liable to imprisonment, although there has been no other act. Persons who knowingly and voluntarily furnish such bands with arms, instruments for commission of crime, lodging, retreat, or means of assembling and re-assembling, are punishable with reclusion.—Fr. P. C., 265-268. I have had before me cases in which the police have sent up men as bad characters under the Criminal Procedure Code, when the circumstances under which they were found were sufficient to warrant a conviction for unlawful assembly.

In France, associations of more than twenty persons, whose object is to meet daily or on certain days for religious, literary, political, or other purposes, cannot be formed without the permission of Government and under such conditions as Government chooses to impose.—Fr. P. C., 291. Such a prohibition does not exist in Belgium.

In England, the offence of unlawful assembly is committed, when three or more persons assemble with intent to carry out any common purpose, in such a manner as to give firm and courageous persons in the neighbourhood of such assembly *reasonable grounds to apprehend a breach of the peace* in consequence of it. A rout is an unlawful assembly which has made a motion towards the execution of the common purpose of the persons assembled. A riot is an unlawful assembly which has actually begun to execute the purpose for which it assembled, by a breach of the peace, and to the terror of the public.

A, B, and C meet at A's house for the purpose of beating D, who lives a mile off. They then go together to D's house, and there beat him. At A's house the meeting is an unlawful assembly, on the road it is a rout, and, when the attack is made upon D, it is a riot.

In England, all assemblies are unlawful, which are held in order that the persons assembled may be trained or drilled to the use of arms, or for the purpose of practising military movements or evolutions without lawful authority.—60 Geo. III.; 61 Geo. IV., c. 1, s. 1.

142. Whoever, being aware of facts which render any assembly an unlawful assembly, intentionally joins that assembly, or continues in it, is said to be a member of an unlawful assembly.

Being a member of an unlawful assembly.

As to liability in the case of a riot, Paterson (Comm. Lib. i, 227) says: "It is a species of offence in which persons may become involved

almost without knowledge or premeditation. Hence whenever a person joins a crowd, which is acting riotously, he must take care to get out of it with the least delay, as his presence is *presumably an encouragement*, and at least goes to swell the number and inspire terror in third parties; and so the *burden of proof is thrown on him who is found in the crowd, to prove that he was an involuntary associate.*" The intention must be inferred from the facts proved and all the surrounding circumstances. If riotous speeches are made, the speakers are guilty of what follows, though they may have retired before the actual disturbance begins (*R.* v. *Sharpe*, 3 Cox, C. C., 288).

The following is an extract from a charge of L. C. J. TINDAL to the grand jury of Bristol in 1832: "It might be safely concluded, that if the excitement which led to the defiance of the law at the earlier part of the day had never existed, the weightier crimes, subsequently committed by the populace, would not have taken place; and that it is precisely for this reason that the law of England has at all times held in the greatest abhorrence riotous and tumultuary assemblages of the people. No man can foresee at the commencement what course they will take, or what consequences will ensue. Though cases may occur in which the object of such assemblies is at first defined and moderate, they rapidly enlarge their powers of mischief; and from the natural effect of the excitement and ferment inseparable from the collection of multitudes in one mass, the original design is quickly lost sight of, and men hurry on to the commission of crimes which at their first meeting they had never contemplated. The beginning of tumult is like the letting out of water; if not stopped at first, it becomes difficult to do so afterwards; it rises and increases, until it overwhelms the fairest and the most valuable works of man.

"By the common law, every private person may lawfully endeavour, of his own authority, and without any warrant or sanction of the Magistrate, to suppress a riot by every means in his power. He may disperse, or assist in dispersing, those who are assembled; he may stay those who are engaged in it from executing their purpose; he may stop and prevent others whom he shall see coming up from joining the rest; and not only has he the authority, but it is his bounden duty, as a good subject to the king, to perform this to the utmost of his ability. If the occasion demands immediate action, and no opportunity is given for procuring the advice or sanction of a Magistrate, it is the duty of every subject to act for himself, and upon his own responsibility, in suppressing a riotous and tumultuous assembly; and he may be assured that whatever is honestly done by him in the execution of that object will be supported and justified by the common law."

"Being aware of facts which render any assembly an unlawful assembly." All that the prosecution can prove is that such facts existed, and that they must have been patent to any person of ordinary intelligence. That being proved, the *onus* of proving ignorance would be on the accused. L. C. J. TINDAL said in the charge referred to: "Let me impress on the attention of all those who, from idleness, curiosity, or mere thoughtlessness, suffer themselves to form a part of a riotous and disorderly meeting, that they subject themselves, unconsciously, to the danger of punishment for crimes which they never contemplated; for where many are collected together in the prosecution of an illegal object, it is often impossible to discriminate between the active and

unoffending part of the mob. *It requires evidence on the part of the accused*, which they may not be able to produce, in order to defend themselves against the charge of participation on the guilt of others. The only safe course for the peaceable and well-disposed on all occasions of popular tumult is this, to lend their ready aid to assist the Magistrates in suppressing it, or, at all events, *forthwith to separate themselves from the others.*" As to the duty of the public in India, see s. 42 (*c*), C. P. C.; and see s. 127, C. P. C., as to the powers of Magistrates and Police.

143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Punishment.

144. Whoever being armed with any deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining an unlawful assembly armed with any deadly weapon.

145. Whoever joins or continues in an unlawful assembly, knowing that such unlawful assembly has been commanded in the manner prescribed by law to disperse, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Joining or continuing in an unlawful assembly, knowing that it has been commanded to disperse.

146. Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting.

Force used by one member in prosecution of common object.

It is not necessary to a riot in England that there should actually be a breach of the peace; it is enough if those assembled cause, not the nervous and weak-minded, but one or more persons possessed of reasonable firmness, to apprehend that a breach of the peace is likely to be committed and is imminent. (*Per* MANSFIELD, C. J., *Clifford* v. *Brandon*, 2 Camp., 367.) It is sufficient if even one person is reasonably alarmed. In a case where many persons, offended at a rise of prices in a theatre, went purposely to the pit, and hissed and hooted, rung bells and blew horns, so as to drown the voices of the actors and make the performance inaudible, it was held they were all guilty of a riot, though no personal violence was actually done to any one indivi-

dual, and no injury done to the house. In India this would be only an unlawful assembly.

It is often very difficult to decide how far the right of private defence may be urged as justification or palliation. The Indian rulings on this point have varied from time to time; but it is pretty well settled now that there can be no right of private defence, where the riot is premeditated on both sides. How far a man may assemble his friends in defence of *actual peaceable* possession is more doubtful. Where the possession is not clear or well ascertained, and previous enjoyment has not been peaceable, there can be no excuse for assembling men: the authorities must be resorted to. In England a distinction is drawn, which appears to be well adapted to the circumstances of India. The distinction is drawn between one's house and one's fields. Though it would be unlawful to assemble numbers to defend the possession of a close or field claimed by one of them, still, if it is to defend the *peaceable possession* of a house, this will be deemed justifiable, owing to the greater degree of protection thrown round the house or castle than round the lands and fields where no one dwells. (*Per* HEATH, J., *R.* v. *Bangor*, 26 St. Tr., 526.)

Riots to demolish buildings, machinery, &c., are in England punishable with penal servitude for life or two years' imprisonment. (24 and 25 Vict., c. 97, s. 11.)

Where there has been a riot, the police often send up, or rather enter in the A Form as accused against whom the offence is proved, more persons than are necessary. The majority abscond, and it is very vexatious and harassing to the Magistrate to try the rioters in batches as they are caught. It is a waste of power and labour to record the same depositions over and over again, not to speak of the inconvenience and expense to witnesses. On fresh accused being brought up, the Magistrate should be permitted merely to read over to them the recorded depositions. This suggestion may shock pseudo-lawyers, but it is in accord with common sense and much existing law also. Some of the Continental Codes even permit the trial and conviction of an absconder in his absence. The compiler has found the following in Paterson's Liberty of the subject: "The mode of punishing rioters is usually by indicting some of the ringleaders, and where the *expense* (a very narrow ground) of trying so many is to be avoided, some who are joined in the indictment *may enter into a rule to confess judgment if their fellows are convicted.*" (Anon., 3 Salk, 317; *R.* v. *Middlemore*, 6 Mod., 212; Lofft, 44.)

In England there is a special remedy when property is injured by rioters. As it is often difficult to fix on the parties really responsible, the Riot Act of 1714 and subsequent Acts provide a remedy sufficient to recoup innocent proprietors; the remedy provided is a proceeding against the hundred, if in a country, and against the town or liberty, if elsewhere. In other words, the inhabitants of the district have to pay the damage done by the social outbreak.

Punishment for rioting.

147. Whoever is guilty of rioting shall be punished with imprisonment for either description for a term which may extend to two years, or with fine, or with both.

148. Whoever is guilty of rioting, being armed with a deadly weapon, or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Rioting, armed with a deadly weapon.

149. If an offence is committed by any member of an unlawful assembly in prosecution of the common object of that assembly, or such as the members of that assembly knew to be likely to be committed in prosecution of that object, every person who, at the time of the committing of that offence, is a member of the same assembly, is guilty of that offence.

Every member of an unlawful assembly to be deemed guilty of any offence committed in prosecution of common object.

150. Whoever hires, or engages or employs, or promotes or connives at the hiring, engagement, or employment of any person to join or become a member of any unlawful assembly, shall be punishable as a member of such unlawful assembly, and for any offence which may be committed by any such person as a member of such unlawful assembly, in pursuance of such hiring, engagement or employment in the same manner as if he had been a member of such unlawful assembly, or himself had committed such offence.

Hiring, or conniving at hiring, of persons to join an unlawful assembly.

151. Whoever knowingly joins or continues in any assembly of five or more persons likely to cause a disturbance of the public peace, after such assembly has been lawfully commanded to disperse, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Knowingly joining or continuing in any assembly of five or more persons after it has been commanded to disperse.

Explanation.—If the assembly is an unlawful assembly within the meaning of section 141, the offender will be punishable under section 145.

152. Whoever assaults or threatens to assault, or obstructs or attempts to obstruct, any public servant in the discharge of his duty as such public servant in endeavouring to disperse an unlawful

Assaulting or obstructing public servant when suppressing riot, &c.

assembly, or to suppress a riot or affray, or uses, or threatens or attempts to use, criminal force to such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Wantonly giving provocation with intent to cause riot.

153. Whoever malignantly or wantonly, by doing anything which is illegal, gives provocation to any person, intending or knowing it to be likely that such provocation will cause the offence of rioting to be committed, shall—

If rioting be committed.

If the offence of rioting be committed in consequence of such provocation, be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both;

If not committed.

And if the offence of rioting be not committed, with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Owner or occupier of land on which an unlawful assembly is held.

154. Whenever any unlawful assembly or riot takes place, the owner or occupier of the land upon which such unlawful assembly is held or such riot is committed, and any person having or claiming an interest in such land, shall be punishable with fine not exceeding one thousand rupees, if he or his agent or manager, knowing that such offence is being or has been committed, or having reason to believe it is likely to be committed, do not give the earliest notice thereof in his or their power to the principal officer at the nearest Police-station, and do not, in the case of his or their having reason to believe that it was about to be committed, use all lawful means in his or their power to prevent it, and in the event of its taking place, do not use all lawful means in his or their power to disperse or suppress the riot or unlawful assembly.

In 12 W. R., Cr., 75, NORMAN, J., said: "Where riot and bloodshed take place as the result of a stand-up fight between the partizans of two rival zemindars, and where, as is too often the case, and as the Magistrate has found was the case here, *lattials* (clubmen) are employed on both sides, there can be little or no doubt that the riot is, if not for the benefit of, at least mainly instigated by, the zemindars or their agents."

155. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent such assembly or riot from taking place and for suppressing and dispersing the same.

Liability of person for whose benefit a riot is committed.

156. Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, the agent or manager of such person shall be punishable with fine, if such agent or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not use all lawful means in his power to prevent such riot or assembly from taking place and for suppressing and dispersing the same.

Liability of agent of owner or occupier for whose benefit a riot is committed.

157. Whoever harbours, receives, or assembles in any house or premises in his occupation or charge, or under his control, any persons, knowing that such persons have been hired, engaged or employed, or are about to be hired, engaged or employed, to join or become members of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Harbouring persons hired for an unlawful assembly.

158. Whoever is engaged or hired, or offers or attempts to be hired or engaged, to do or assist in doing any of the acts specified in section 141, shall be punished with imprisonment of either description for

Being hired to take part in an unlawful assembly or riot.

a term which may extend to six months, or with fine, or with both.

And whoever, being so engaged or hired as aforesaid, goes armed, or engages or offers to go armed, with any deadly weapon or with anything which, used as a weapon of offence, is likely to cause death, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Or to go armed.

159. When two or more persons by fighting, in a public place, disturb the public peace, they are said to 'commit an affray.'

Affray.

"Public place." See s. 510, *infra*. An omnibus passing along a highway is a 'public place.'—*R.* v. *Holmes*, Dears and P., C. C. R., 207. *Quære.*—Is an enclosed ground, to which persons are admitted by payment, a 'public place'? A sale by auction, called by public placards, and held in a house and garden in and adjoining a public street, to which sale the public have free access, and where a large number of persons are assembled, is a place of public resort within the meaning of 5 Geo. IV., c. 83, s. 4, which relates to the arrest without warrant of suspected persons.—*Sewell* v. *Taylor*, 7 C. B., N. S., 160. So a railway-station platform, *Re Davis*, 26 L. J. 392 (Ex.); so is an omnibus.

An assault may take place anywhere; an affray must be in a public place. An instance of an affray is where a fight is carried on in a public place, in which case all present and encouraging are guilty of the offence of affray (*R.* v. *Perkins*, 4 C. & P., 537). In England one person may be guilty of affray (1 Hawk. P. C., c. 28, s. 2), as if he goes about in a threatening manner with a formidable weapon.—(*R.* v. *Knight*, 3 Mod., 117.) An affray is nothing more than an assault committed in a public place and in a conspicuous manner, and is so called because, as Coke says, it affrighteth and maketh men afraid (Coke, 3 Inst., 158).

In England any person whatever, who witnesses an affray, may use all necessary force to stop it, and to seize and deliver to a constable one of the affrayers.

160. Whoever commits an affray shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to one hundred rupees, or with both.

Punishment for committing affray.

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

Public servant taking a gratification other than legal remuneration in respect of an official act.

161. Whoever, being or expecting to be a public servant, accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

'Expecting to be a public servant.'

Explanations.—If a person not expecting to be in office obtains a gratification by deceiving others into a belief that he is about to be in office, and that he will then serve them, he may be guilty of cheating, but he is not guilty of the offence defined in this section.

'Gratification.'

The word 'gratification' is not restricted to pecuniary gratifications, or to gratifications estimable in money.

'Legal remuneration.'

The words 'legal remuneration' are not restricted to remuneration which a public servant can lawfully demand, but include all remuneration which he is permitted by the Government which he serves to accept.

'A motive or reward for doing.'

A person who receives a gratification as a motive for doing what he does not intend to do, or as a reward for doing what he has not done, comes within these words.

Illustrations.

(*a*.) A, a munsif obtains from Z, a banker, a situation in Z's bank for A's brother, as a reward to A for deciding a cause in favour of Z. A has committed the offence defined in this section.

(*b*.) A, holding the office of Resident at the Court of a subsidiary power, accepts a lakh of rupees from the Minister of that power. It does not appear that A accepted this sum as a motive or reward for doing or forbearing to do any particular official act, or for rendering or attempting to render any particular service to that power with the British Government. But it does appear that A accepted the sum as a motive or reward for generally showing favour in the exercise of his official functions to that power. A has committed the offence defined in this section.

(*c*.) A, a public servant, induces Z erroneously to believe that A's influence with the Government has obtained a title for Z, and thus induces Z to give A money as a reward for this service. A has committed the offence defined in this section.

The Indian Codes do not state what is to be done with the bribe. The French Penal Code (180) enacts that the briber is in no case to receive back the things given by him or their value. See Belg. P. C., 252. Such things are to be confiscated for the profit of the local hospitals, and it has been ruled by the Court of Cassation that the acquittal of the accused briber does not prevent the confiscation of the thing given.—10th Aug. 1834. This is a very sensible ruling. Magistrates sometimes think they are bound to return the property in a theft case to an accused who has been acquitted. But see s. 517, C. P. C. It is quite possible that an offence may have been committed regarding the property, although the accused be acquitted.

The offer of a bribe is not separately dealt with, but such an offer is punishable as abetment. See s. 109 (*a*), *supra*. "Every person who gives or offers any bribe to any executive officer of this state, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable with imprisonment for ten years and fine of five thousand dollars."—N. Y. P. C., 98.

"Legal remuneration." In England gratuities are allowed in some cases and after permission taken. The following is extracted from the Metropolitan Police Orders: "No gratuity is to be received by any of the police without the express permission of the Commissioner. The Commissioner will allow gratuities to be received on all proper occasions upon the circumstances being reported to him. A gratuity offered at the time by a person to whom special services are rendered upon any sudden emergency may be taken, subject to the decision of the Commissioner as to its being retained or returned to the person giving it. . . . The superintendents, before they submit to the Commissioner their recommendations that gratuities should be allowed, are to make such inquiry as to satisfy themselves that no solicitations, direct or indirect, have been made to the persons by whom the gratuities are given, and if there is reason to suppose that solicitation has been made, or that there are any other circumstances which make it improper for the gratuities to be received, all the particulars are to be reported to the Commissioner."

Taking a gratification, in order by corrupt or illegal means, to influence a public servant.

162. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or

illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Taking a gratification for the exercise of personal influence with a public servant.

163. Whoever accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by the exercise of personal influence, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favour or disfavour to any person, or to render or attempt to render any service or disservice to any person with the Legislative or Executive Government of India, or with the Government of any Presidency, or with any Lieutenant-Governor, or with any public servant, as such, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

An advocate who receives a fee for arguing a case before a Judge; a person who receives pay for arranging and correcting a memorial addressed to Government, setting forth the services and claims of the memorialist; a paid agent for a condemned criminal, who lays before the Government statements tending to show that the condemnation was unjust—are not within this section, inasmuch as they do not exercise or profess to exercise personal influence.

Punishment for abetment by public servant of the offences above defined.

164. Whoever, being a public servant, in respect of whom either of the offences defined in the last two preceding sections is committed, abets the offence, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Illustration.

A is a public servant. B, A's wife, receives a present as a motive for soliciting A to give an office to a particular person. A abets her doing

so. B is punishable with imprisonment for a term not exceeding one year, or with fine, or with both. A is punishable with imprisonment for a term which may extend to three years, or with fine, or with both.

Public servant obtaining any valuable thing, without consideration, from person concerned in any proceeding or business transacted by such public servant.

165. Whoever, being a public servant, accepts or obtains or agrees to accept or attempts to obtain, for himself or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to have been, or to be, or to be likely to be concerned in any proceeding or business transacted, or about to be transacted by such public servant, or having any connection with the official functions of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a*.) A, a Collector, hires a house of Z, who has a settlement-case pending before him. It is agreed that A shall pay fifty rupees a month, the house being such that, if the bargain were made in good faith, A would be required to pay two hundred rupees a month. A has obtained a valuable thing from Z without adequate consideration.

(*b*.) A, a Judge, buys of Z, who has a cause pending in A's Court, Government-promissory notes at a discount, when they are selling in the market at a premium. A has obtained a valuable thing from Z without adequate consideration.

(*c*.) Z's brother is apprehended and taken before A, a Magistrate, on a charge of perjury. A sells to Z shares in a bank at a premium, when they are selling in the market at a discount. Z pays A for the shares accordingly. The money so obtained by A is a valuable thing obtained by him without adequate consideration.

Public servant disobeying a direction of the law, with intent to cause injury to any person.

166. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience cause, injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Illustration.

A, being an officer directed by law to take property in execution, in order to satisfy a decree pronounced in Z's favour by a Court of Justice, knowingly disobeys that direction of law, with the knowledge that he is

likely thereby to cause injury to Z. A has committed the offence defined in this section.

A clerk who allows a record in his charge to be inspected by unauthorized persons is not punishable under the Indian Penal Code. In New York a clerk who wilfully permits any deposition or examination of a defendant to be inspected by any person except the Government attorneys and the defendant and his counsel, is guilty of a misdemeanour (one year's imprisonment and 500 dollars fine).—N. Y. P. C., 204.

"With intent to cause injury." See s. 217, *infra*, "with intent to save any person from punishment." In England, neglect of official duty is a misdemeanour, provided that the discharge of such duty is not attended with greater danger than a man of ordinary firmness and activity may be expected to encounter. *R.* v. *Wyatt*, 1 Salk., 381; *R.* v. *Bembridge*, 3 Doug., 332; *R.* v. *Jones*, Strange, 1146. One of the examples in Stephen's Digest is the following: A, the Mayor of B, neglects to perform various acts which it was in his power to do, and which a man of ordinary prudence, firmness, and activity, might have been expected to do, in order to suppress riots in B. A commits a misdemeanour. This provision of the English law is very comprehensive. The Indian law is narrower. Some specific and positive direction of law must be disobeyed. See I. L. R., 1 Mad., 266.

Public servant framing an incorrect document with intent to cause injury.

167. Whoever, being a public servant, and being, as such public servant, charged with the preparation or translation of any document, frames or translates that document, in a manner which he knows or believes to be incorrect, intending thereby to cause, or knowing it to be likely that he may thereby cause, injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Quære.—What about persons using such documents? If the document is not a forgery, s. 471, *infra*, does not apply. There might be cases in which the use of such documents would not fall under ss. 192, 196, *infra*. Section 252 of the Louisiana Penal Code provides a penalty for the *use* of such documents.

Public servant unlawfully engaging in trade.

168. Whoever, being a public servant, and being legally bound as such public servant not to engage in trade, engages in trade, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Public servant unlawfully buying or bidding for property.

169. Whoever, being a public servant, and being legally bound as such public servant not to purchase or bid for certain property, purchases or bids for that property

either in his own name or in the name of another, or jointly or in shares with others, shall be punished with simple imprisonment for a term which may extend to two years or with fine, or with both; and the property, if purchased, shall be confiscated.

Personating a public servant.

170. Whoever pretends to hold any particular office as a public servant, knowing that he does not hold such office, or falsely personates any other person holding such office, and in such assumed character does or attempts to do any act under colour of such office, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wearing garb or carrying token used by public servant with fraudulent intent.

171. Whoever, not belonging to a certain class of public servants, wears any garb or carries any token resembling any garb or token used by that class of public servants, with the intention that it may be believed, or with the knowledge that it is likely to be believed that he belongs to that class of public servants, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

The French Penal Code goes much further than the Indian Penal Code, and punishes with from six months to two years' imprisonment any person who publicly wears a costume, uniform, or decoration, which does not belong to him.—Fr. P. C., 259. The Belgian Penal Code (228) inflicts a fine only.

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

Absconding to avoid service of summons or other proceeding from a public servant.

172. Whoever absconds in order to avoid being served with a summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, shall be punished with simple imprisonment for a

term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, or order is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Preventing service of summons or other proceeding or preventing publication thereof.

173. Whoever in any manner intentionally prevents the serving on himself, or on any other person, of any summons, notice, or order proceeding from any public servant legally competent, as such public servant, to issue such summons, notice, or order, or intentionally prevents the lawful affixing to any place of any such summons, notice, or order, or intentionally removes any such summons, notice or order from any place to which it is lawfully affixed, or intentionally prevents the lawful making of any proclamation, under the authority of any public servant legally competent, as such public servant, to direct such proclamation to be made, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the summons, notice, order, or proclamation is to attend in person or by agent, or to produce a document in a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Non-attendance in obedience to an order from a public servant.

174. Whoever, being legally bound to attend in person or by an agent at a certain place and time in obedience to a summons, notice, order, or proclamation proceeding from any public servant legally competent, as such public servant, to issue the same, intentionally omits to attend at that place or time, or departs from the place where he is bound to attend before the time at which it is lawful for him to depart, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or if the summons, notice, order, or proclamation is to attend in person or by agent in a Court of Justice, with simple imprisonment for a term which may extend to six months or with

fine which may extend to one thousand rupees or with both.

Illustrations.

(*a.*) A, being legally bound to appear before the Supreme Court at Calcutta, in obedience to a subpœna issuing from that Court, intentionally omits to appear. A has committed the offence defined in this section.

(*b.*) A, being legally bound to appear before a Zilla Judge as a witness, in obedience to a summons issued by that Zilla Judge, intentionally omits to appear. A has committed the offence defined in this section.

Omission to produce a document to a public servant by a person legally bound to produce such document.

175. Whoever, being legally bound to produce or deliver up any document to any public servant as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or if the document is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Illustration.

A, being legally bound to produce a document before a Zilla Court, intentionally omits to produce the same. A has committed the offence defined in this section.

Omission to give notice or information to a public servant by a person legally bound to give notice or information.

176. Whoever, being legally bound to give any notice or to furnish information on any subject to any public servant as such, intentionally omits to give such notice, or to furnish such information in the manner and at the time required by law, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both; or, if the notice or information required to be given respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

As to legal obligation, art. 744 of the New York Penal Code is as follows :—"No person is punishable for an omission to perform an act,

where such act has been performed by another person acting in his behalf, and competent by law to perform it."—Compare I. L. R., 4 Cal., 623.

Special Acts, such as the Act for Registration of Births and Deaths, need do nothing more than impose the legal obligation, and describe its nature, and enact that disobedience shall be punishable under s. 176 or some other applicable section of the Penal Code. Where codes exist, they should be utilised to the fullest extent.

Furnishing false information.

177. Whoever, being legally bound to furnish information on any subject to any public servant as such, furnishes as true information on the subject which he knows or has reason to believe to be false, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both; or, if the information which he is legally bound to give respects the commission of an offence, or is required for the purpose of preventing the commission of an offence, or in order to the apprehension of an offender, with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a.*) A, a landholder, knowing of the commission of a murder within the limits of his estate, wilfully misinforms the Magistrate of the district that the death has occurred by accident in consequence of the bite of a snake. A is guilty of the offence defined in this section.

(*b.*) A, a village watchman, knowing that a considerable body of strangers has passed through his village in order to commit a dacoity in the house of Z, a wealthy merchant residing in a neighbouring place, and being bound, under cl. 5, s. 7, Reg. III, 1821, of the Bengal Code, to give early and punctual information of the above fact to the officer of the nearest Police-station, wilfully misinforms the Police-officer that a body of suspicious characters passed through the village with a view to commit dacoity in a certain distant place in a different direction. Here A is guilty of the offence defined in the latter part of this section.

Refusing oath when duly required to take oath by a public servant.

178. Whoever refuses to bind himself by an oath to state the truth, when required so to bind himself, by a public servant legally competent to require that he shall so bind himself, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

179. Whoever, being legally bound to state the truth on any subject to any public servant, refuses to answer any question demanded of him touching that subject by such public servant, in the exercise of the legal powers of such public servant, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Refusing to answer a public servant authorized to question.

180. Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Refusing to sign statement.

181. Whoever, being legally bound by an oath to state the truth on any subject to any public servant or other person authorized by law to administer such oath, makes to such public servant or other person as aforesaid, touching that subject, any statement which is false, and which he either knows or believes to be false, or does not believe to be true, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

False statement on oath to public servant or person authorized to administer an oath.

182. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant to use the lawful power of such public servant to the injury or annoyance of any person, or to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

False information with intent to cause a public servant to use his lawful power to the injury of another person.

Illustrations.

(*a.*) A informs a Magistrate that Z, a Police-officer subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, know-

ing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z. A has committed the offence defined in this section.

(*b.*) A falsely informs a public servant that Z has contraband salt in a secret place, knowing such information to be false, and knowing that it is likely that the consequence of the information will be a search of Z's premises, attended with annoyance to Z. A has committed the offence defined in this section.

Resistance to the taking of property by the lawful authority of a public servant.

183. Whoever offers any resistance to the taking of any property by the lawful authority of any public servant, knowing or having reason to believe that he is such public servant, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Obstructing sale of property offered for sale by authority of a public servant.

184. Whoever intentionally obstructs any sale of property offered for sale by the lawful authority of any public servant as such, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Illegal purchase or bid for property offered for sale by authority of a public servant.

185. Whoever, at any sale of property held by the lawful authority of a public servant as such, purchases or bids for any property on account of any person, whether himself or any other, whom he knows to be under a legal incapacity to purchase that property at that sale, or bids for such property not intending to perform the obligations under which he lays himself by such bidding, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Obstructing public servant in discharge of public functions.

186. Whoever voluntarily obstructs any public servant in the discharge of his public functions shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Omission to assist public servant when bound by law to give assistance.

187. Whoever, being bound by law to render or furnish assistance to any public servant in the execution of his public-duty, intentionally omits to give such assistance, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such assistance be demanded of him by a public servant legally competent to make such demand for the purposes of executing any process lawfully issued by a Court of Justice, or of preventing the commission of an offence, or of suppressing a riot or affray, or of apprehending a person charged with, or guilty of, an offence or of having escaped from lawful custody, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

Disobedience to an order duly promulgated by a public servant.

188. Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health, or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation.—It is not necessary that the offender should intend to produce harm or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

Illustration.

An order is promulgated by a public servant lawfully empowered to promulgate such order directing that a religious procession shall not pass

down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. A has committed the offence defined in this section.

Threat of injury to public servant.

189. Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

The Indian Penal Code does not sufficiently deal with attempts to tamper with jurors. Lou. P. C., 150, enacts that "if any one shall out of Court use any arguments in favour of or against either of the parties in a criminal or civil suit, he shall be fined from twenty to one hundred dollars, and shall be imprisoned from five to thirty days; and if he be an attorney, counsellor, or officer of the Court, the punishment shall be double."

Threat of injury to induce any person to refrain from applying for protection to a public servant.

190. Whoever holds out any threat of injury to any person, for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

In New York to wilfully prevent or dissuade a witness from attending is a misdemeanour. To give or offer a bribe to a witness, upon any understanding or argument that his testimony shall be thereby influenced, is also a misdemeanour.—N. Y. P. C., 169, 170.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

Giving false evidence.

191. Whoever, being legally bound by an oath, or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, is said to give false evidence.

Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.

Illustrations.

(*a.*) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(*b.*) A, being bound by an oath to state the truth, states that he believes a certain signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(*c.*) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(*d.*) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(*e.*) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

"It is no defence to a prosecution for perjury that the oath was administered or taken in an irregular manner (inadvertently or intentionally, as where a witness kisses his thumb instead of the book).... It is no defence that the accused was not competent to give the testimony in which falsehood is alleged .... An unqualified statement of that which one does not know to be true is equivalent to a statement of that which one knows to be false."—N. Y. P. C., 153, 154, 157.

In New York, persons convicted of perjury cannot be received as witnesses in any action on their own behalf, nor in any action between adverse parties against any person who shall object thereto.

It seems to be the law in America that swearing to a false statement is not perjury unless the matter is material to the issue, question, or purpose about or for which the statement is made, or *unless it is intended and calculated to give probability to a material statement, or credibility to the affiant.* So that a denial of relationship to one of the parties would be perjury. United States and Federal Reporter. *Ruled*, in Florida, that there can be no conviction for perjury on proof merely that defendant has testified at different times to irreconcileable facts. It must be further shewn which statement was false.—19 Fla., 552.

In India it has been settled, after many conflicting rulings, that a person may be convicted on an alternative charge in respect of two diametrically contradictory statements, even when made in the same proceeding, one in examination-in-chief and one in cross-examination.

The essence of the offence is the *intention* in one or other instance to state what is known to be untrue or not known to be true. I. L. R., 7 All., 44; 10 Cal., 937.

Perjury in English law is an assertion upon an oath duly administered in a judicial proceeding, before a competent Court, of the truth of some matter-of-fact, material to the question depending in that proceeding, which assertion the assertor does not believe to be true when he makes it, or on which he knows himself to be ignorant. A fact may be material, although evidence of its existence was improperly admitted. Steph. Dig., 82. In Indian law it is not necessary that the statement should be material; but that would be considered in awarding punishment.

Some very good illustrations are given in Stephen's Digest :—

A swears that certain goods are of a certain value, being entirely ignorant upon the subject. A is guilty of perjury, whether the goods are of that value or not.—*R.* v. *Mawbey*, 6 T. R., 637.

The goods are of that value, but A believes that they are not. A has committed perjury.—*Gurney's Case*, 3 Inst., 166.

The goods are not of that value, but A believes that they are. A has not committed perjury.

A swears that he thinks that certain words are in his handwriting. The jury find that he did not think so. A commits perjury.—*R.* v. *Schlesinger*, 10 Q. B., 670.

Fabricating false evidence.

192. Whoever causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry, or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and that such circumstance, false entry, or false statement, so appearing in evidence, may cause any person, who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material to the result of such proceeding, is said 'to fabricate false evidence.'

Illustrations.

(*a.*) A puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.

(*b.*) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

(*c.*) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

Destruction, mutilation, alteration, or falsifying of any record, book, paper, &c., by any clerk or officer having the custody of the same is punishable, under the New York Penal Code, with five years' imprisonment and forfeiture of office. Such offences may fall under the second paragraph of s. 193, *infra*, or s. 425, P. C. Section 477 applies to valuable securities only. But it may not always happen that the false entry is to appear in a *proceeding taken by law before a public servant*. The act is often not forgery owing to the absence of the intents specified in s. 463. This is one of the points on which the Indian Penal Code appears to require amendment.

"Makes any document containing a false statement." Such an act without further intention is punishable in Germany with six months' imprisonment or a fine of 300 marks.—G. P. C., 271. If the motive be gain for self or another, or to cause harm to another, the punishment may be ten years' reclusion and fine of 6,000 marks.—*Ib.*, 272.

Punishment for false evidence.

193. Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years and shall also be liable to fine; and whoever intentionally gives or fabricates false evidence in any other case shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-Martial or before a Military Court of Request is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

Illustration.

A, in an enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of lands, makes on oath a statement which he knows to be false. As this inquiry is a stage of a judicial proceeding, A has given false evidence.

194. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by this Code or the law of England shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Giving or fabricating false evidence with intent to procure conviction of a capital offence.

And if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.

If innocent person be thereby convicted and executed.

The propriety of the second paragraph of the section has been questioned in England. But such is the ancient law.—Mirror, c. 1, s. 9; Brit., c. 52; Bract. lib. iii, c. 4; 1 Hawk., P. C., c. 31, s. 7; 3 Inst., 91, 224. Foster thought the offence should only be cognizable *in foro cæli*. But Paterson remarks that there is no reason why it should not be murder, if the death is shown clearly to be a consequence of the false swearing. Murder by poisoning at first differed little in the kind and cogency of its evidence from murder by words and speeches; and the operation of poisons was long equally mysterious and inscrutable, till chemical science and *post-mortem* examinations reduced it to rules and observations easily followed and traced out.

195. Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which by this Code or the law of England is not capital, but punishable with transportation for life, or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

Giving or fabricating false evidence with intent to procure conviction of an offence punishable with transportation or imprisonment.

Illustration.

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is transportation for life or rigorous imprisonment for a term which may extend to ten years, with or without fine. A therefore is liable to such transportation or imprisonment, with or without fine.

196. Whoever corruptly uses, or attempts to use, as true or genuine evidence any evidence which he knows to be false or fabricated, shall be punished in the same manner as if he gave or fabricated false evidence.

Using evidence known to be false.

Under Indian law the false evidence must be actually used or an attempt made to use it. See s. 471, *infra*. In New York "every person *preparing* any false book, paper, thing, &c., *with intent to produce it*, or allow it to be produced for any fraudulent or deceitful purpose, as genuine, upon any trial, proceeding, or inquiry whatever, authorized by law, is guilty of felony."—N. Y. P. C., 167.

Issuing or signing a false certificate.

197. Whoever issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.

"Required by law or by law admissible in evidence." There are many sorts of false certificates that could not be punished under the Penal Code. Section 182, *supra*, appears to be appropriate in some cases. The French Penal Code (159—162) specially provides penalties against those who, to favour anyone, falsely certify to illness or infirmities incapacitating for any public service, or who fabricate false certificates of good conduct, of poverty, or of circumstances intended to procure anyone a situation, credit, or help. Section 162 punishes false certificates of all sorts, from which damage may result to a third person or to the public.—*Cf.* Ital. P. C., 360. See Appendix.

In Italy, doctors, surgeons, and health officers who, from favour, give a false certificate of illness so as to free any one from a public duty, are punishable with a fine of from 100 to 1,000 francs. If they have received gifts or promises as an inducement to do so, they are further punishable with not less than six months' imprisonment, and those who give or promise are liable to the same punishment.—Ital. P. C., 360.

Using as a true certificate one known to be false in a material point.

198. Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

False statement made in any declaration which is by law receivable as evidence.

199. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorized by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false, or does not believe to be true, touching any point material to the object for which the declaration is made or used, shall be punished in the same manner as if he gave false evidence.

Under the Louisiana Penal Code, 200, to declare a falsehood, by a voluntary declaration or affidavit, which is neither required by law,

nor made in the course of any judicial proceeding, is punishable with six months' imprisonment. See s. 181, *supra*.

Using as true any such declaration known to be false.

200. Whoever corruptly uses, or attempts to use, as true any such declaration, knowing the same to be false in any material point, shall be punished in the same manner as if he gave false evidence.

Explanation.—A declaration which is inadmissible merely upon the ground of some informality is a declaration within the meaning of sections 199 and 200.

Causing disappearance of evidence of an offence committed, or giving false information touching it, to screen the offender.

201. Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, shall—

If a capital offence.

If the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with transportation.

And if the offence is punishable with transportation for life or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

If punishable with less than ten years' imprisonment.

And if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both.

Illustration.

A, knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable to imprisonment of either description for seven years, and also to fine.

Under this section it must be proved that an offence has been committed, and that the accused knew or had information sufficient to lead him to believe that the offence had been committed.—I. L. R.,

3 All., 279 ; 11 Cal., 619. But it is not essential that there should be any proof of who committed the offence.—7 W. R., Cr., 22. The section refers to cases where a person causes disappearance of evidence of an offence committed by another. The person concerned as a principal cannot be convicted of the secondary offence of concealing evidence of the crime.—I. L. R., 7 All., 749.

Intentional omission to give information of an offence, by a person bound to inform.

202. Whoever, knowing or having reason to believe that an offence has been committed, intentionally omits to give any information respecting that offence which he is legally bound to give, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Giving false information respecting an offence committed.

203. Whoever, knowing or having reason to believe that an offence has been committed, gives any information respecting that offence which he knows or believes to be false, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

To justify a conviction under this section, it must be proved that the offence had actually been committed.—20 W. R., Cr., 66.

Destruction of document to prevent its production as evidence.

204. Whoever secretes or destroys any document which he may be lawfully compelled to produce as evidence in a Court of Justice, or in any proceeding lawfully held before a public servant as such, or obliterates or renders illegible the whole or any part of such document with the intention of preventing the same from being produced or used as evidence before such Court or public servant as aforesaid, or after he shall have been lawfully summoned or required to produce the same for that purpose, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False personation for the purpose of any act or proceeding in a suit.

205. Whoever falsely personates another, and in such assumed character makes any admission or statement, or confesses judgment, or causes any process to be issued, or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with

imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Fraudulent removal or concealment of property to prevent its seizure as a forfeiture or in execution of a decree.

206. Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture, or in satisfaction of a fine under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulent claim to property to prevent its seizure as a forfeiture or in execution of a decree.

207. Whoever fraudulently accepts, receives, or claims any property or any interest therein, knowing that he has no right or rightful claim to such property or interest, or practises any deception touching any right to any property or any interest therein, intending thereby to prevent that property or interest therein from being taken as a forfeiture or in satisfaction of a fine under a sentence which has been pronounced, or which he knows to be likely to be pronounced, by a Court of Justice or other competent authority, or from being taken in execution of a decree or order which has been made, or which he knows to be likely to be made, by a Court of Justice in a civil suit, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Fraudulently suffering a decree for a sum not due.

208. Whoever fraudulently causes or suffers a decree or order to be passed against him at the suit of any person for a sum not due, or for a larger sum than is due to such person, or for any property or interest in property to which such person is not entitled, or fraudulently causes or suffers a decree or order to be executed against him after it has been satisfied, or for anything in respect of which it has

been satisfied, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustration.

A institutes a suit against Z. Z knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment to pass against him for a larger amount at the suit of B, who has no just claim against him, in order that B, either on his own account or for the benefit of Z, may share in the proceeds of any sale of Z's property which may be made under A's decree. Z has committed an offence under this section.

The Penal Code should go further and make punishable transfers of property of which the transferror is not in possession. I extract the following from the New York Penal Code: "Every person who buys or sells, &c., any pretended right or title to any lands or tenements, unless the grantor has been in possession, or he and those by whom he claims, for the space of one year before such grant, conveyance, &c., is guilty of a misdemeanor." But any person, having a just title to lands, upon which there shall be an adverse possession, may execute a mortgage on such lands.—N. Y. P. C., 189. Some such provision as this is really necessary in India, where shares in an estate or a jote are sold in a gambling way by persons not in possession.

Dishonestly making false claim in a Court of Justice.

209. Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes, in a Court of Justice, any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

Fraudulently obtaining a decree for sum not due.

210. Whoever fraudulently obtains a decree or order against any person for a sum not due or for a larger sum than is due, or for any property or interest in property to which he is not entitled, or fraudulently causes a decree or order to be executed against any person after it has been satisfied, or for anything in respect of which it has been satisfied, or fraudulently suffers or permits any such act to be done in his name, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

False charge of offence made with intent to injure.

211. Whoever, with intent to cause injury to any person, institutes, or causes to be instituted, any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding

or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

False charges are exceedingly prevalent in India, and it is much to be regretted that there is a chaotic mass of contradictory rulings under this section, which renders it very difficult to bring offenders to justice. The point on which there are divergent rulings is, how far a complainant is to have an opportunity of substantiating his original charge before he can be prosecuted under this section. It seems agreed that, if a Magistrate merely gives a sanction under s. 195, C. P. C., and does not *institute* a prosecution by proceeding under s. 476, C. P. C., it is not necessary to examine first any of the witnesses to prove the original charge. Where a Magistrate institutes the prosecution, distinctions have been drawn between cases where a complainant brings a charge before the police and the institution of such charge by petition before a Magistrate; beween cases where complainant has objected to the result of the Police investigation, and cases where he has failed to do so, and so on *usque ad satietatem*. "The fact is, that all these rulings appear to be antagonistic to the spirit as well as to the letter of distinct sections of the Code of Criminal Procedure. The Allahabad and Madras High Courts have refrained from travelling outside the Codes, and have ruled that there is nothing in the law which requires that a complainant shall have an opportunity of substantiating his complaint by being allowed to produce evidence before the Magistrate before the latter can take steps against him under s. 476 of the Criminal Procedure Code." (1 Mad. H. C. Rep., 30; I. L. R., 1 All., 497; 3 All., 322; 4 All., 182.) The Madras ruling that it is sufficient that the false charge has been made, that it has been disposed of by a final order, and is not pending at the time of the offender's trial, tallies exactly with the law laid down in the German Penal Code. Section 164 of that Code enacts that all that is necessary is that the information should not be pending. In France, in cases of prosecution for false charge (*denonciation calomnieuse*), it is left to the discretion of the Court to suspend proceedings until there shall have been a decision of competent authority on the charge originally made (Cass., 17th April 1846; 28th Nov. 1851). This is as it should be. In India such a matter of procedure may well be left to the discretion of District and Joint Magistrates. There are many cases of such a nature that a formal judicial inquiry and record of the examination of witnesses is superfluous and a waste of the public time. As a matter of law, the Police C Form and report may be regarded as a decision of competent authority, for, certain offences are declared to be *cognizable by the Police*, and, even in non-cognizable cases, the Magistrate may dismiss a petition after considering the result of a police investigation (ss. 202, 203, C. P. C.). The Criminal Procedure Code does not compel but *merely authorises* ("such Magistrate *may*," &c.) the

Magistrate, on receiving a police report, to hold further investigation or inquiry, "or otherwise to dispose of the case in the manner provided in the Code." See ss. 159, 169, 170, 173, C. P. C. The 3rd paragraph of s. 173 is as follows:—"Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond *or otherwise as he thinks fit.*" It may be unhesitatingly affirmed that *it is not the law* that a man cannot be prosecuted under s. 211 of the Penal Code until all his witnesses have been examined by a Magistrate. Indeed such a proposition actually overrides the law as contained in ss. 191, 203, C. P. C., *et passim.* If A and B present counter petitions of assault, can B insist that his case be heard first, because owing to his greater cunning or perhaps to the judicious bestowal of eight annas on a *chaprassie*, his petition has been presented half an hour before that of A? The case which appears *primâ facie* true is invariably taken up first, and if it ends in a conviction, the counter petition is summarily dismissed under s. 203. It would be illegal to issue process on a complaint which there are strong grounds for believing to be false.

Section 203, C. P. C., authorizes a Magistrate to dismiss a complaint if he thinks there is no sufficient ground for proceeding. An accused, prosecuted under s. 211, P. C., has the fullest opportunity of proving his original charge. As a matter of fact and practice, to hold that a man cannot be prosecuted under s. 211, P. C., until all his witnesses have been heard, is to render this section a dead-letter. A complainant has brought a false charge before the police. He knows that he is likely to be prosecuted, and he presents a petition to the Magistrate asking that his witnesses may be heard. His wish is that the Magistrate should refuse his petition, as he knows that, if convicted, he may plead such refusal or appeal as a ground for upsetting the conviction. If the Magistrate, determined that the course of justice shall not be defeated by technical absurdities, allows the petition and summons the witnesses, the complainant *instructs his witnesses or some of them not to appear.* Further processes have to be issued, and thus time is wasted, and the course of justice is frustrated. The Magistrate is convinced that the complainant is keeping his witnesses out of the way, but there is nothing on the record to prove this to the satisfaction of an Appellate or Revisional Court. Perhaps the complainant presents a supplementary list of witnesses. The Magistrate, it is said, must assist him in procuring their attendance; that is, he must exhaust every sort of process, summonses, warrants, proclamations, attachment. At least, if he does not do so, there is a fair chance of the conviction under s. 211 being upset on appeal. The result of some of the Calcutta rulings is that false charges are brought with impunity. If Government were to allow an extra Deputy Magistrate for inquiring into the original complaint in the manner directed, there might sometimes be convictions under s. 211, P. C. But with the existing staff of Magistrates, such convictions must continue to be very rare.

The ingredients of an action for false imprisonment differ very slightly from those of a prosecution for false charge. The ingredients of an action are (1) the innocence of the plaintiff or the want of proof of his guilt; in a prosecution the Court should be reasonably satisfied of the innocence of the complainant; (2) the malice of the defendant (equivalent to the intent to cause injury) and the want of

reasonable and probable cause for the accusation (*knowing* that there is no just or lawful ground, &c.); (3) the actual injury caused to the plaintiff. In a prosecution it is only necessary to prove an intent to cause injury, but, as a matter of fact, there must in all cases have been injury, *i. e.*, harm illegally caused in body, mind, reputation, or property.

"As regards the malice," says Paterson, "it is not enough to prove malice alone, for malice may co-exist with reasonable and proper cause." *Willans* v. *Taylor*, 6 Bing., 186. This malice is essentially a question of circumstances. It may be inferred from rashness or neglect of inquiry, where means of inquiry existed; and from the fact that the prosecution was instituted for a collateral purpose, such as for frightening others or enforcing payment of a debt.—*Stevens* v. *Midland R. Co.*, 10 Exch., 356; *Macdonald* v. *Rooke*, 2 Bing. N. C., 219. But the kind of malice alleged is not necessarily any personal spite or hatred towards the plaintiff (*cf.* "With intent to cause injury to *any person*"), provided that kind of *malus animus* can be inferred, which is popularly denominated improper motives.—*Stockley* v. *Hornedye*, 8 C. & P., 11. The inference of malice is not displaced or rebutted by merely showing that counsel's opinion was taken, and that he recommended the prosecution.—*Hewlett* v. *Cruchley*, 5 Taunt., 283.

Persons who bring false charges are quite sufficiently protected by the law (s. 487, C. P. C.), which enacts that the Magistrate who sanctions or institutes a prosecution under s. 211, P. C., cannot try the case himself. This is a sufficient safeguard, and to put other obstacles in the way is to encourage the institution of false charges.

Section 191 of the German Penal Code (relating to slander) enacts that when a punishable act has been denounced before some authority with the object of proceeding against the person charged, the information cannot be prosecuted for slander until it has been decided *that there is no ground for instituting a prosecution or until* the completion of such prosecution (if instituted). It is not necessary that the original charge should be tried, or even that witnesses should be summoned. Section 192 enacts that proof of the truth of the fact affirmed or spread about will not prevent a conviction for slander, if the manner of affirming it or the surrounding circumstances indicate malice. This is an important section to bear in mind in cases of defamation arising out of caste disputes. There was a case very much in point in the Madras Presidency, where it was held that it was not justifiable for the high priest of a caste to communicate by means of a postcard the fact of his having excommunicated another member of the caste. In Germany, if the slander consists in stating that a man has committed a punishable offence, and he has actually been tried for it and acquitted, the person accused of slander is not allowed to go behind this judgment of acquittal, and prove that the complainant really did commit the act (G. P. C., 190).

Harbouring an offender.

212. Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the

intention of screening him from legal punishment, shall—

If a capital offence.

If the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine;

If punishable with transportation for life, or with imprisonment.

And if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—This provision shall not extend to any case in which the harbour or concealment is by the husband or wife of the offender.

Illustration.

A knowing that B has committed dacoity, knowingly conceals B in order to screen him from legal punishment. Here, as B is liable to transportation for life, A is liable to imprisonment of either description for a term not exceeding three years, and is also liable to fine.

Where a person has, after the fact, acquired *reasonably certain* knowledge that the murder has been committed, he is treated as an accessory after the fact, if he harbour or assist or relieve the murderer, or cause his escape.—2 Hawk., P. C., c. 29, s. 35. Punishment is imprisonment for two years or less, or penal servitude for life, or for at least five years.—24 & 25 Vict., c. 100, s. 67. The receiving by a wife of her husband, though she has good reason to believe he has committed a felony, is deemed no offence in her, owing to the superior claims of her relationship.—Bracton, b. iii, c. 32, s. 9.

Taking gift, &c., to screen an offender from punishment.

213. Whoever accepts, or attempts to obtain, or agrees to accept, any gratification for himself or any other person, or any restitution of property to himself or any other person, in consideration of his concealing an offence or of his screening any person from legal punishment for any offence, or of his not proceeding against any person

for the purpose of bringing him to legal punishment, shall—

If a capital offence.

If the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with transportation for life, or with imprisonment.

And if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with imprisonment not exceeding ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Article 312 of the New York Procedure Code is as follows :—"A person may be indicted for having, with the knowledge of the commission of a public offence, taken money or property of another, or a gratuity or reward, or an engagement or promise therefor, upon an agreement or understanding, express or implied, to compound or conceal the offence, &c., though the person guilty of the original offence have not been indicted or tried."

Offering gift or restoration of property in consideration of screening offender.

214. Whoever gives or causes, or offers or agrees to give or cause, any gratification to any person, or to restore or cause the restoration of any property to any person, in consideration of that person's concealing an offence, or of his screening any person from legal punishment for any offence, or of his not proceeding against any person for the purpose of bringing him to legal punishment, shall—

If a capital offence.

If the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

If punishable with transportation for life, or with imprisonment.

And if the offence is punishable with transportation for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence is punishable with

imprisonment not extending to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both.

Exception.—The provisions of sections 213 and 214 do not extend to any case in which the offence may lawfully be compounded.

Taking gift to help to recover stolen property, &c.

215. Whoever takes, or agrees or consents to take, any gratification under pretence or on account of helping any person to recover any moveable property of which he shall have been deprived by any offence punishable under this Code, shall, unless he uses all means in his power to cause the offender to be apprehended and convicted of the offence, be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Under s. 102 of the Larceny Act, 1861, a man who advertises a reward for the return of stolen property, and indicates that no questions shall be asked or inquiry made, is liable to forfeit the sum of £50 to *any person who will sue for the same by action of debt.* The printer and publisher of the newspaper are also liable. See s. 109, ill. (*a*), *supra.* But see also s. 44 of the Code of Criminal Procedure. A man is not bound to give information of theft, so that it would be hard to punish the abettor of an offence under s. 215, P. C. The English law punishes only an advertisement, as it would be contrary to public policy to allow to go unpunished an openly expressed intention to hush up a theft. But see s. 214.

Harbouring an offender who has escaped from custody, or whose apprehension has been ordered.

216. Whenever any person convicted of or charged with an offence, being in lawful custody for that offence, escapes from such custody, or whenever a public servant, in the exercise of the lawful powers of such public servant, orders a certain person to be apprehended for an offence, whoever, knowing of such escape or order for apprehension, harbours or conceals that person with the intention of preventing him from being apprehended, shall be punished in the manner following, that is to say—

If a capital offence.

If the offence for which the person was in custody or is ordered to be apprehended is punishable with death, he shall be punished with imprisonment of either description for a term which

may extend to seven years, and shall also be liable to fine;

If punishable with transportation for life, or with imprisonment.

If the offence is punishable with transportation for life, or imprisonment for ten years, he shall be punished with imprisonment of either description for a term which may extend to three years, with or without fine; and if the offence is punishable with imprisonment which may extend to one year and not to ten years, he shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of the imprisonment provided for such offence, or with fine, or with both.

'Offence' in this section includes also any act or omission of which a person is alleged to have been guilty out of British India which, if he had been guilty of it in British India, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in British India; and every such act or omission shall, for the purposes of this section, be deemed to be punishable as if the accused person had been guilty of it in British India.

Exception.—This provision does not extend to the case in which the harbour or concealment is by the husband or wife of the person to be apprehended.

Under the Indian law, it is immaterial whether the person harboured has or has not committed the offence, for which his apprehension has been ordered. It is only necessary that the harbourer should know of the order for apprehension. Compare the first six words of s. 212, *supra*. The American law appears to differ. The following case occurred in the State of Nebraska. A was convicted of horse-stealing, and on the same day B was convicted of having concealed A, knowing him to have stolen the horse. The judgment against A having been reversed on error,—*held*, on error by B, that it would be presumed that the record of A's conviction was a necessary part of B's conviction, and that, as such record had been pronounced erroneous, the judgment against B would be reversed.—13 Neb., 55.

The text of the French Penal Code (248) enacts punishment against those who conceal persons *whom they know* to have committed crimes (qu'ils savaient avoir commis des crimes). But the rulings of the Court of Cassation on this point are conflicting. One ruling (15th Oct. 1853) is equivalent to the words of the Indian Penal Code "knowing of the order for apprehension." "It suffit qu'il soit l'objet des recherches de la justice." Another ruling of the 27th July 1867, enacts that it is necessary that the concealer, "ayant connaissance personelle de la culpabilité, quoique non encore reconnue en justice

ait fourni un asile ou refuge au criminel." The French Code excepts from the operation of the section not only the husband and wife, but brothers or sisters of the concealed criminals "ou leurs alliés au même degré." The Belgian Penal Code (339) uses the words: "Qu'ils savaient être poursuivies on condamnés, &c.," and is thus the same as the Indian law.

By the Louisiana Penal Code the exception is also extended to the relations of the accused in the ascending or descending line, either by affinity or consanguinity, his brothers or sisters, and domestic servants.—Lou. P. C., 71.

In China, "all relations connected in the first and second degree, and living under the same roof . . . . when mutually assisting each other, and concealing the offences one of another, and moreover, slaves and hired servants assisting their masters and concealing their offences, shall not be punishable. Relations in the third and fourth degrees are liable to a punishment three degrees less than would be inflicted on strangers under the same circumstances; more remote relations receive one degree more punishment. These exceptions do not extend to cases of high treason or rebellion."—China P. C., 32. In awarding punishment, Indian Magistrates should take into consideration the nearness of relationship, as also the fact that a man and woman, though not married, were living as man and wife.

Public servant disobeying a direction of law with intent to save person from punishment or property from forfeiture.

217. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Public servant framing an incorrect record or writing with intent to save person from punishment or property from forfeiture.

218. Whoever, being a public servant, and being, as such public servant, charged with the preparation of any record or other writing, frames that record or writing in a manner which he knows to be incorrect, with intent to cause, or knowing it to be likely that he will thereby cause, loss or injury to the public or to any person, or with intent thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment, or with the intent to save, or knowing that he is likely thereby

to save, any property from forfeiture or other charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

It was ruled by the Court of Cassation under s. 146 of the French Penal Code, that it is sufficient if the altered register was kept by the accused in his capacity of a public officer. Agents of change (les agents de change) are public officers, and alterations in their registers of operations constitute forgeries (des faux en écriture publique) *even though such registers are not prescribed* by article 84 of the Code of Commerce.—Cass., 19th July 1860. Bengalee *amla* are very much addicted to keeping extra registers and memoranda besides those prescribed.

Public servant in a judicial proceeding corruptly making an order, report, &c., which he knows to be contrary to law.

219. Whoever, being a public servant, corruptly or maliciously makes or pronounces in any stage of a judicial proceeding any report, order, verdict or decision which he knows to be contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

"Corruptly or maliciously." These terms are not defined in the Indian Penal Code. The following definitions from the New York Penal Code (765, 766) will be found useful. "The term 'corruptly' imports a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to, or to some other person." "The terms 'malice' and 'maliciously' import a wish to vex, annoy, or injure, another person, established either by proof or presumption of law."

The following illustration is given in Stephen's Digest :—A, a justice, illegally refuses to accept bail for a person entitled to be bailed, under an opinion, hastily adopted in a crisis of real danger, that it was right to do so. A does not commit an offence.—*It.* v. *Badger*, 4 Q. B., 475.

See also ss. 166, 217, *supra*. In England the writ of attaint of jurors was abolished in 1826. The Star Chamber used to commit to the Fleet, and order to be pilloried, jurors who acquitted persons, as it thought, wrongfully. When the jury acquitted Throckmorton in 1554, some of them were fined £2,000; and the jury, who acquitted Lilburne in 1653, were summoned before a Council of State to answer for their misconduct. But in 1670, when a juror refused to pay his fine, and was imprisoned, and sued out his *habeas corpus*, VAUGHAN, C. J., laid it down that a juror is in no way liable, if he consults his own conscience. Though the writ of attaint was abolished in 1826, punishment was reserved for embracery or corrupt conduct to influence a jury, and for a juror wilfully or corruptly consenting thereto.—6 Geo. IV., c. 50, s. 61.

220. Whoever, being in any office which gives him legal authority to commit persons for trial or to confinement, or to keep persons in confinement, corruptly or maliciously commits any person for trial or to confinement, or keeps any person in confinement, in the exercise of that authority, knowing that in so doing he is acting contrary to law, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Commitment for trial or confinement by a person having authority who knows that he is acting contrary to law.

221. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person charged with or liable to be apprehended for an offence, intentionally omits to apprehend such person, or intentionally suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

Intentional omission to apprehend on the part of a public servant bound by law to apprehend.

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with death ; or

Punishment.

With imprisonment of either description for a term which may extend to three years, with or without fine, if the person in confinement or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment for a term which may extend to ten years ; or

With imprisonment of either description for a term which may extend to two years, with or without fine, if the person in confinement or who ought to have been apprehended was charged with or liable to be apprehended for an offence punishable with imprisonment for a term less than ten years.

222. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person under sentence of a Court of Justice for any offence, or lawfully committed to custody, intentionally omits to apprehend such person, or intentionally

Intentional omission to apprehend on the part of a public servant bound by law to apprehend person under sentence or lawfully committed.

suffers such person to escape, or intentionally aids such person in escaping or attempting to escape from such confinement, shall be punished as follows, that is to say :—

Punishment.

With transportation for life or with imprisonment of either description for a term which may extend to fourteen years, with or without fine, if the person in confinement or who ought to have been apprehended is under sentence of death ; or

With imprisonment of either description for a term which may extend to seven years, with or without fine, if the person in confinement or who ought to have been apprehended is subject, by sentence of a Court of Justice, or by virtue of a commutation of such sentence, to transportation for life or penal servitude for life, or to transportation or penal servitude or imprisonment for a term of ten years or upwards ; or

With imprisonment of either description for a term which may extend to three years, or with fine, or with both, if the person in confinement or who ought to have been apprehended is subject, by a sentence of a Court of Justice, to imprisonment for a term not extending to ten years, or if the person was lawfully committed to custody.

Escape from confinement or custody negligently suffered by a public servant.

223. Whoever, being a public servant, legally bound as such public servant to keep in confinement any person charged with or convicted of any offence, or lawfully committed to custody, negligently suffers such person to escape from confinement, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

"Lawfully committed to custody." It has been ruled by the Court of Cassation under s. 238 of the French Penal Code, that the accused cannot be acquitted on the ground of the illegality of the arrest. Cass., 3rd May 1855. Section 247 of the same Code enacts that, where there has been negligence only, the imprisonment shall cease directly the escaped persons (les évadés) have been retaken, provided that such re-capture takes place within four months from the date of escape, and they be not arrested for other offences subsequently committed.

Resistance or obstruction by a person to his lawful apprehension.

224. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself for any offence with which he is charged or of which

he has been convicted, or escapes or attempts to escape from any custody in which he is lawfully detained for any such offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Explanation.—The punishment in this section is in addition to the punishment for which the person to be apprehended or detained in custody was liable for the offence with which he was charged, or of which he was convicted.

Resistance or obstruction to the lawful apprehension of another person.

225. Whoever intentionally offers any resistance or illegal obstruction to the lawful apprehension of any other person for an offence, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained for an offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both;

Punishment.

Or, if the person to be apprehended, or the person rescued or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with transportation for life or imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is charged with or liable to be apprehended for an offence punishable with death, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is liable, under the sentence of a Court of Justice, or by virtue of a commutation of such a sentence, to transportation for life, or to transportation, penal servitude, or imprisonment for a term of ten years or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

Or, if the person to be apprehended or rescued, or attempted to be rescued, is under sentence of death, shall be punished with transportation for life or imprisonment

of either description for a term not exceeding ten years, and shall also be liable to fine.

Omission to apprehend, or sufferance of escape, on part of public servant in cases not otherwise provided for.

225*A*. Whoever, being a public servant, legally bound as such public servant to apprehend or to keep in confinement any person in any case not provided for in section 221, or section 222, or section 223, or in any other law for the time being in force, omits to apprehend that person or suffers him to escape from confinement, shall be punished—

(*a*) if he does so intentionally, with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and

(*b*) if he does so negligently, with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for.

225*B*. Whoever, in any case not provided for in section 224 or section 225, or in any other law for the time being in force, intentionally offers any resistance or illegal obstruction to the lawful apprehension of himself or of any other person, or escapes or attempts or escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Unlawful return from transportation.

226. Whoever, having been lawfully transported, returns from such transportation, the term of such transportation not having expired, and his punishment not having been remitted, shall be punished with transportation for life, and shall also be liable to fine, and to be imprisoned with rigorous imprisonment for a term not exceeding three years before he is so transported.

Violation of condition of remission of punishment.

227. Whoever, having accepted any conditional remission of punishment, knowingly violates any condition on which such remission was granted, shall be punished with the punishment to which he was

originally sentenced, if he has already suffered no part of that punishment; and, if he has suffered any part of that punishment, then, with so much of that punishment as he has not already suffered.

Intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding.

228. Whoever intentionally offers any insult, or causes any interruption, to any public servant while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

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See s. 480, C. P. C.

If an executive or judicial Magistrate receives any insult, in the exercise of his duties, by means of words, writing, &c., tending to harm his honour or delicacy *(tendant à inculper leur honneur ou leur délicatesse)*, the offender is punishable with imprisonment from fifteen days to two years. If the insult has taken place before a Court or tribunal, the punishment is two to five years' imprisonment, Fr. P. C., 222. Under this section the Court of Cassation has ruled that the act of insulting *(l'outrage par paroles)* a Magistrate, not even in the latter's presence, amounts to the offence, if, by the will of the offender, the words have been carried to the knowledge of the Magistrate by a third party (Cass., 17th March 1866). The same Court has ruled that the outrage received in the exercise of duty preserves its character, though the offender had the intention to insult, not the public officer, but the private man, with whom he had previously had quarrels (Cass., 27th August 1858). To strike or use any violence towards a Magistrate in the exercise of his duty is punishable with from two to five years' imprisonment; and so careful and jealous is the French law of the honour and dignity of its magistracy, that the maximum sentence must be pronounced, if the violence has taken place in a Court. The offender is, moreover, liable to be deprived of his civil rights for from five to ten years, and to be placed under police supervision for the same time (Fr. P. C., 228.) Section 229, *ibid*, enacts that the offender, after release from prison, may be forbidden to go within a radius of a certain number of miles from the place where the Magistrate sits, for a period of from five to ten years. The law is much the same in Belgium, but the punishment is not so severe. (Belg. P. C., 275.)

Though the public are admitted to witness trials in Courts of Justice, yet, they are not thereby authorised to express any opinion whatever on the proceedings, for, this would lead to disturbances incompatible with the severe impartiality aimed at by all tribunals; and, therefore, to indulge in any outburst of joy or pity is itself a contempt of authority. Holt, as counsel in a trial for assault, complained of the spectators hissing. (*R.* v. *Bether*, 8 St. Tr., 759.)

229. Whoever, by personation or otherwise, shall intentionally cause or knowingly suffer himself to be returned, empanelled, or sworn as a juryman or assessor in any case in which he knows that he is not entitled by law to be so returned, empanelled, or sworn, or knowing himself to have been so returned, empanelled, or sworn contrary to law, shall voluntarily serve on such jury or as such assessor, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Personation of a juror or assessor.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

230. Coin is metal used for the time being as money, and stamped and issued by the authority of some State or Sovereign Power in order to be so used.

'Coin' defined.

Coin stamped and issued by the authority of the Queen, or by the authority of the Government of India, or of the Government of any Presidency, or of any Government in the Queen's dominions, is the Queen's coin.

Queen's coin.

Illustrations.

(*a.*) Cowries are not coin.
(*b.*) Lumps of unstamped copper, though used as money, are not coin.
(*c.*) Medals are not coin, inasmuch as they are not intended to be used as money.
(*d.*) The coin denominated as the Company's rupee is the Queen's coin.

231. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting coin.

Explanation. — A person commits this offence who, intending to practise deception, or knowing it to be likely that deception will thereby be practised, causes a genuine coin to appear like a different coin.

'Counterfeit' is defined, s. 28, *supra*. The explanation is merely an amplificatory illustration. In Stephen's Digest, "counterfeit coin" means coin not genuine, but resembling or appa-

rently intended to resemble, or pass for genuine coin; and *includes* genuine coin prepared or altered so as to resemble or pass for coin of a higher denomination.

"To counterfeit means to make in the semblance of a true gold or silver coin, one having in its composition a less proportion of the precious metal than is contained in such true coin, with intent that the same should be passed as true, either in the United States or elsewhere. . . . . It is not necessary that the resemblance should be perfect."—Lou. P. C., 255.

Counterfeiting the Queen's coin.

232. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Making or selling instrument for counterfeiting coin.

233. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of any die or instrument, for the purposes of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Making or selling instrument for counterfeiting Queen's coin.

234. Whoever makes or mends, or performs any part of the process of making or mending, or buys, sells, or disposes of any die or instrument, for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting the Queen's coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Possession of instrument or material for the purpose of using the same for counterfeiting coin.

235. Whoever is in possession of any instrument or material for the purpose of using the same for counterfeiting coin, or knowing or having reason to believe that the same is intended to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the coin to be counterfeited is the Queen's coin, shall be

punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Abetting in India the counterfeiting out of India of coin.

236. Whoever, being within British India, abets the counterfeiting of coin out of British India, shall be punished in the same manner as if he abetted the counterfeiting of such coin within British India.

Import or export of counterfeit coin.

237. Whoever imports into British India, or exports therefrom, any counterfeit coin, knowing or having reason to believe that the same is counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Import or export of counterfeits of the Queen's coin.

238. Whoever imports into British India, or exports therefrom, any counterfeit coin which he knows or has reason to believe to be a counterfeit of the Queen's coin, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery to another of coin possessed with the knowledge that it is counterfeit.

239. Whoever, having any counterfeit coin which at the time when he became possessed of it he knew to be counterfeit, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person to receive it, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Queen's coin, possessed with the knowledge that it is counterfeit.

240. Whoever, having any counterfeit coin which is a counterfeit of the Queen's coin, and which at the time when he became possessed of it he knew to be a counterfeit of the Queen's coin, fraudulently, or with intent that fraud may be committed, delivers the same to any person, or attempts to induce any person

to receive it, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be counterfeit.

241. Whoever delivers to any other person as genuine, or attempts to induce any other person to receive as genuine, any counterfeit coin which he knows to be counterfeit, but which he did not know to be counterfeit at the time when he took it into his possession, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin counterfeited, or with both.

Illustration.

A, a coiner, delivers counterfeit Company's rupees to his accomplice B for the purpose of uttering them. B sells the rupees to C, another utterer, who buys them knowing them to be counterfeit. C pays away the rupees for goods to D, who receives them not knowing them to be counterfeit. D, after receiving the rupees, discovers that they are counterfeit and pays them away as if they were good. Here D is punishable only under this section, but B and C are punishable under section 239 or 240, as the case may be.

Possession of counterfeit coin by a person who knew it to be counterfeit when he became possessed thereof.

242. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin, having known at the time when he became possessed thereof that such coin was counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by a person who knew it to be counterfeit when he became possessed thereof.

243. Whoever, fraudulently or with intent that fraud may be committed, is in possession of counterfeit coin which is a counterfeit of the Queen's coin, having known at the time when he became possessed of it that it was counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Person employed in a mint causing coin to be of a different weight or composition from that fixed by law.

244. Whoever, being employed in any mint lawfully established in British India, does any act, or omits what he is legally bound to do, with the intention of causing any coin issued from that mint to be of a different weight or composition from the weight or composition fixed by law, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Unlawfully taking from a mint any coining instrument.

245. Whoever, without lawful authority, takes out of any mint lawfully established in British India any coining tool or instrument, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Fraudulently or dishonestly diminishing the weight or altering the composition of any coin.

246. Whoever fraudulently or dishonestly performs on any coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation.—A person who scoops out part of the coin and puts anything else into the cavity, alters the composition of that coin.

Fraudulently or dishonestly diminishing the weight or altering the composition of the Queen's coin.

247. Whoever fraudulently or dishonestly performs on any of the Queen's coin any operation which diminishes the weight or alters the composition of that coin, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Altering appearance of any coin with intent that it shall pass as a coin of a different description.

248. Whoever performs on any coin any operation which alters the appearance of that coin with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Altering appearance of the Queen's coin with intent that it shall pass as a coin of a different description.

249. Whoever performs on any of the Queen's coin any operation which alters the appearance of that coin, with the intention that the said coin shall pass as a coin of a different description, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

In England it is an offence to bend or deface the current coin of the realm, quite apart from any intention to pass as a different coin.

Delivery to another of coin possessed with the knowledge that it is altered.

250. Whoever, having coin in his possession with respect to which the offence defined in section 246 or 248 has been committed, and having known at the time when he became possessed of such coin that such offence has been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery of Queen's coin possessed with the knowledge that it is altered.

251. Whoever, having coin in his possession with respect to which the offence defined in section 247 or 249 has been committed, and having known at the time when he became possessed of such coin that such offence had been committed with respect to it, fraudulently, or with intent that fraud may be committed, delivers such coin to any other person, or attempts to induce any other person to receive the same, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Possession of altered coin by a person who knew it to be altered when he became possessed thereof.

252. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 246 or 248 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with

respect to such coin, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Possession of Queen's coin by a person who knew it to be altered when he became possessed thereof.

253. Whoever, fraudulently or with intent that fraud may be committed, is in possession of coin with respect to which the offence defined in either of the sections 247 or 249 has been committed, having known at the time of becoming possessed thereof that such offence had been committed with respect to such coin, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

Delivery to another of coin as genuine, which, when first possessed, the deliverer did not know to be altered.

254. Whoever delivers to any other person as genuine or as a coin of a different description from what it is, or attempts to induce any person to receive as genuine or as a different coin from what it is, any coin in respect of which he knows that any such operation as that mentioned in sections 246, 247, 248 or 249 has been performed, but in respect of which he did not, at the time when he took it into his possession, know that such operation had been performed, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine to an amount which may extend to ten times the value of the coin for which the altered coin is passed or attempted to be passed.

Counterfeiting a Government stamp.

255. Whoever counterfeits, or knowingly performs any part of the process of counterfeiting, any stamp issued by Government for the purpose of revenue, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Explanation.—A person commits this offence who counterfeits by causing a genuine stamp of one denomination to appear like a genuine stamp of a different denomination.

The counterfeiting of bank notes appears to fall under ss. 475, 476, *infra*. 24 and 25 Vict., cap. 98, s. 17, enacts that "any person who, without lawful authority or excuse (*the proof whereof shall lie*

on the party accused), shall knowingly offer, utter, dispose of, or put off, or have in his custody or possession, any paper or other material upon which there is an impression of any word, number, figure, device, character, or ornament which resembles, or is apparently intended to resemble, any part of a bank note, bank bill of exchange, or bank post bill of the Governor and Company of the Bank of England or of the Bank of Ireland, or of any other bankers, shall be guilty of felony, and on conviction liable to penal servitude for 14 years, or not less than 3 years. By this law any person having in possession what are called "flash notes" may be apprehended if the above circumstances can be proved against them.

Having possession of an instrument or material for the purpose of counterfeiting a Government stamp.

256. Whoever has in his possession any instrument or material for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or selling instrument for the purpose of counterfeiting a Government stamp.

257. Whoever makes or performs any part of the process of making, or buys, or sells, or disposes of, any instrument for the purpose of being used, or knowing or having reason to believe that it is intended to be used, for the purpose of counterfeiting any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Sale of counterfeit Government stamp.

258. Whoever sells, or offers for sale, any stamp which he knows or has reason to believe to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of a counterfeit Government stamp.

259. Whoever has in his possession any stamp which he knows to be a counterfeit of any stamp issued by Government for the purpose of revenue, intending to use or dispose of the same as a genuine stamp, or in order that it may be used as a genuine stamp, shall be punished with

imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Using as genuine a Government stamp known to be counterfeit.

260. Whoever uses as genuine any stamp, knowing it to be a counterfeit of any stamp issued by Government for the purpose of revenue, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Effacing any writing from a substance bearing a Government stamp, or removing from a document a stamp used for it, with intent to cause loss to Government.

261. Whoever, fraudulently or with intent to cause loss to the Government, removes or effaces from any substance bearing any stamp issued by Government for the purpose of revenue any writing or document for which such stamp has been used, or removes from any writing or document a stamp which has been used for such writing or document, in order that such stamp may be used for a different writing or document, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Using a Government stamp known to have been before used.

262. Whoever, fraudulently or with intent to cause loss to the Government, uses for any purpose a stamp issued by Government for the purpose of revenue, which he knows to have been before used, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Erasure of mark denoting that stamp has been used.

263. Whoever, fraudulently or with intent to cause loss to Government, erases or removes from a stamp issued by Government for the purpose of revenue any mark put or impressed upon such stamp for the purpose of denoting that the same has been used, or knowingly has in his possession, or sells or disposes of, any such stamp from which such mark has been erased or removed, or sells or disposes of any such stamp which he knows to have been used, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

Fraudulent use of false instrument for weighing.

264. Whoever fraudulently uses any instrument for weighing which he knows to be false shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

The fraudulent manipulation of a true instrument amounts to cheating.—2 W. R., Cr., 65. See s. 415.

Fraudulent use of false weight or measure.

265. Whoever fraudulently uses any false weight or false measure of length or capacity, or fraudulently uses any weight or any measure of length or capacity as a different weight or measure from what it is, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Being in possession of false weights or measures.

266. Whoever is in possession of any instrument for weighing, or of any weight, or of any measure of length or capacity, which he knows to be false, and intending that the same may be fraudulently used, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

See s. 153. Criminal Procedure Code.

The methods of cheating in India by false weights, measures, and scales are Protean in their variety and exceedingly ingenious. Much cheating is carried on in this way at country hâts and fairs. Legislation regarding standard weights is urgently called for in India, and specimen weights, &c., should be kept at all police-stations and outposts for comparison. In China, "if any measures, weights, or scales are made use of in the public market, which, however exactly conformable to standard, have not been examined, compared, and duly stamped by the officers of Government, they shall be held to be unlawful, and the person using them punishable with 40 blows."—China P. C., 155.

Making or selling false weights or measures.

267. Whoever makes, sells or disposes of any instrument for weighing, or any weight, or any measure of length or capacity, which he knows to be false, in order that the same may be used as true, or knowing that the same is likely to be used as true, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

Public nuisance.

268. A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

A common nuisance is not excused on the ground that it causes some convenience or advantage.

"Who does any act which causes annoyance, &c." *Held*, in North Carolina and also in the Supreme Court of the United States, that the continued and public use of profane oaths, frequently and boisterously repeated, though on a single occasion, and but for the space of five minutes, is indictable as a public nuisance.—85 N. C., 528; S. C., 39 Am. Rep., 713. *Held*, in Michigan, that a charge that defendant polluted an ancient stream, thereby rendering the water unfit to drink, "to the common nuisance of the people," must show that the stream is one in which the public has rights.—46 Mich., 437. Section 277, *infra*, refers only to "public springs and reservoirs." Other cases fall under this section.

"Any person who encroaches on the space allotted to public streets, squares, highways, or passages of any kind; that is to say, who appropriates a part of any such space to his own use, by cultivating it or building on it, shall be punished with 60 blows, and obliged to level and restore the ground to its original state."—China P. C., 435.

The keeping of the iron rails of a railroad six or eight inches above the level of a highway at a public crossing,—*Held*, in America, an indictable public nuisance.—80 Ky., 147. "The people *in general* who dwell or occupy property in the vicinity." Does this mean that the act must cause annoyance to the *majority* of people in the vicinity? The New York Penal Code avoids the difficulty by using the words "any considerable number of persons."

The keeping of bawdy or disorderly houses may be punished under this section, where there is common injury or annoyance. "Every person who keeps any disorderly house, or any house of public resort by which the peace, comfort, or decency of the immediate neighbourhood is habitually disturbed, or who keeps any inn in a disorderly manner, is guilty of a misdemeanor."—N. Y. P. C., 368.

With regard to the maxim *actus non facit reum, nisi mens sit rea*, Stephen, J., remarked in a recent case: "It is impossible now to apply the maxim generally to all statutes, and it is necessary to look at the object of each act to see whether and how far knowledge is

of the essence of the offence created."—*Cundy* v. *Lecocq*, 13 Q. B. D., 207.

"Does any act which causes any common injury, danger, &c." These words are very wide; nor is there any reason to regret their being so. It is illegal to construe a section too strictly with the avowed intention of limiting its natural operation. See New York and Louisiana Codes and note under section 6, *supra*.

In France, there are certain acts which can be dealt with as contraventions of police, and are punished by the police tribunals. With reference to such contraventions, the Court of Cassation has ruled that the delinquent cannot urge his good faith as an excuse.—Cass., 22nd Feb. and 5th Dec. 1863; 2nd Jan. 1864, &c. Nor can they be excused by reason of any permission which may have been granted by Municipal authority in contempt of legal prohibitions or rules.—Cass., 27th April 1866, *et al.* But s. 66 of the Penal Code (relating to acts without discernment by persons under sixteen years of age) applies to such contraventions. Police contraventions are of various kinds, *e. g.*, neglect to repair or sweep hearths and chimneys. It has been ruled by the Court of Cassation that if a chimney can be observed from outside to be on fire, such fact alone is sufficient for a conviction, even though it be proved that the chimney has, in accordance with the usage of the neighbourhood, been swept twice in the year.—Cass., 13th Oct. 1849. The French law appears to be very stringent as regards acts prejudicial to health or sanitation. One of the contraventions of the first class is "neglect to sweep streets or passages in communes in which such duty is imposed on the inhabitants." Under this section (471, para. 3) the Court of Cassation has held that such neglect to sweep is an infraction even in the absence of any special obligation. Some of the police contraventions detailed in the fourth book of the French Penal Code are deserving of mention, *e. g.*, neglect to destroy caterpillars in fields or gardens, gleaning before the crops have been entirely removed or before sunrise or after sunset, obstruction of any public way, or diminution of the width or safety of the passage, infringement of rules legally made *by executive authority*, neglect by innkeepers, lodging-house keepers, &c., to enter in a register the names of persons passing a night in their houses, refusal, after requisition, to give assistance in case of accidents, riots, shipwrecks, inundation, fire, robbery, &c., establishment in a public place of lotteries, or games of chance. With reference to the last contravention, the Court of Cassation has ruled that the game must be one of pure chance, and that écarté, *la mouche*, piquet, pool, *quilles*, are not games of chance.—Cass., 31st July 1863, *et al.* It is also a police contravention to make a trade of divination or prognostication or of explaining dreams, to make noises which disturb the tranquillity of the inhabitants, to take turf, earth, or stones from public roads or places. Persons previously convicted of a police contravention within the previous twelve months are liable to an enhanced punishment on re-conviction.

"A common nuisance is an act not warranted by law or an omission to discharge a legal duty, which act or omission obstructs or causes inconvenience or damage to the public in the exercise of rights common to all Her Majesty's subjects."—Steph. Dig. The following are some of the illustrations in the Digest:—A tramway laid down on a high road in such a manner as to obstruct to some extent the use of the road by common carriages is a public nuisance, although it may be convenient to a *large majority* of those who use the road.—*R.* v. *Train*,

2 B. & S., 640. The erection without legal authority of a telegraphic post at the side of a highway is a public nuisance; so is the non-repair of a public highway. A railway company makes a railway within five yards of an ancient public highway in such a manner that the locomotives frighten the horses of persons using the highway as a carriage road. The railway is made and the locomotives used under Acts of Parliament, which do not require the Company to screen the line from the road. This is not a public nuisance, because the act done is warranted by law.—*It.* v. *Pease.*

In England sanitary matters are now chiefly regulated by the Public Health Act, 1875, which enacts that if the local authority, or their officers, are not admitted to inspect any premises for the purpose of ascertaining the existence of any nuisance, a Justice may make an order requiring their admission, and may compel the abatement of the nuisance. By s. 119 of the above Act, a Justice, on complaint upon oath by a medical officer of health, inspector of nuisances, or other officer of a local authority, may grant a warrant to any such officer to enter and search any premises in which such officer has reason to believe that there is kept or concealed any animal carcass, meat, fish, vegetables, &c., unfit for food, and intended for sale. By 29 and 30 Vict., c. 90, s. 19, the word "nuisance" includes, besides deposits of noxious matter, defective privies, drains, &c., animals so kept as to be a nuisance, &c., houses or rooms unhealthily crowded, dirty factories, furnaces which do not consume their own smoke.

Where they do not fall under s. 283, *infra*, obstructions and encroachments can be dealt with under this section. It is the duty of the police to bring nuisances to notice. See Reg. XX, 1817, s. 30 (5); also 3rd col. of sched. ii, to the Code of Criminal Procedure Code. Offences under ss. 283, 291, P. C., are cognizable by the police. In towns in India awnings and tatties in front of shops are often a source of nuisance. In the Metropolitan Police District in England, the police first issue a notice, merely reciting the law on the subject. "Every person who shall set up, or continue any pole, blind, awning, line, or any other projection from any window, parapet, or other part of any house, shop, or other building so as to cause any annoyance or obstruction in any thoroughfare, is liable to a penalty of 40s. for every such offence (2 and 3 Vict., c. 47, s. 60). If the nuisance be continued after this notice, the police will proceed to enforce the law." This is a procedure that might with advantage be adopted in India. The Police Report for Bengal for 1885 rather indicates that the police are shirking their duties under the cognizable sections of this chapter.

The prisoner exposed the dead body of her infant child near a public highway, where many people were certain to pass and repass.—*Held*, that the prisoner was guilty of a nuisance at common law.—*Reg.* v. *Clark*, 15 Cox, C. C., 171.

The defendant was convicted in Canada of a nuisance in carrying on a manufactory of animal manure in the city, and on motion to set aside the verdict—*Held*, that evidence to prove the advantage accruing or likely to accrue to the public at large from the sale and use of a manufactured article could not be admitted, as an allegation that the thing complained of furnished a greater convenience to the public than it took away was no answer to an indictment for nuisance.—10 L. C. R., 117. In India, if annoyance is necessarily caused to any persons who may have occasion to use a public right, it is no answer

to a prosecution to show that convenience or advantage is caused to others.

A Magistrate can always proceed under the general sections in the Penal Code, though the nuisance complained of may be brought under some Municipal or other special Act; for the municipal officers may fail to do their duty. Again, municipal corporations can themselves be indicted for nuisances. The Corporation of Sandhurst (Victoria) was indicted and convicted for allowing certain persons to place stalls and vend marketable articles in one of the public streets so as to be a nuisance and obstruction.—Argus Rep., 22nd June 1866. On rule *nisi* calling on the proprietors of a bone mill to shew cause why leave should not be granted to file a criminal information for nuisance against them—*Held*, that the right to proceed by information is not taken away by the special enactments of the "Public Health Statute" with regard to noxious trades.—Kerferd and Box's Vic. Dig., 198.

Negligent act likely to spread infection of any disease dangerous to life.

269. Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

"Every person who wilfully exposes himself or another, affected with any contagious or infectious disease, in any public place or thoroughfare, except in his necessary removal in a manner not dangerous to the public health, is guilty of a misdemeanor."—N. Y. P. C., 468. Hale thought that if one go about purposely to infect another with an infectious disease, such as the plague, it may be murder; and though he do it not purposely, still it may be a misdemeanor. There appears to be nothing in the law to prevent a man or a woman from being prosecuted for communicating venereal disease, unless it be held that such disease is not dangerous to life. Under the Statute 1 Jas. I., c. 31, a writ *de leproso amovendo* could be obtained to seize and imprison a leprous person, and, if he went about, he could even be killed with impunity. In modern times it has been held to be an indictable offence for one suffering from a contagious disease, such as smallpox, to be unlawfully or without necessity in a public place, where infection may be communicated. Now there is special legislation on the subject.—38 and 39 Vict., c. 55, ss. 120—129.

In India, K, knowing that he was suffering from cholera, travelled as a passenger in a train without informing the railway servants of his condition. M, knowing his condition, bought K's ticket, and travelled with him. *Held*, that K was guilty under s. 269, and M was guilty of abetment.—I. L. R., 7 Mad., 276.

In England every person commits a common nuisance who does anything which endangers the health, life, or property of the public or any part of it. Everything is deemed to endanger health, life or property which either causes actual danger thereto, or which must do so in the absence of a degree of prudence and care, the continual exercise of which cannot be reasonably expected.

A carries a child infected with smallpox along a public highway in which persons were passing and near to inhabited houses. A, being infected, exposes himself; or brings a glandered horse to a fair; or permits his house standing by the highway to become so ruinous as to be likely to fall down and injure passengers; or burns down his own house, which is close to other houses. All these acts are common nuisances.—Steph. Dig., 114.

Malignant act likely to spread infection of any disease dangerous to life.

270. Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disobedience to a quarantine rule.

271. Whoever knowingly disobeys any rule made and promulgated by the Government of India, or by any Government, for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, or for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Adulteration of food or drink, which is intended for sale.

272. Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

"So as to make such article noxious as food or drink." A milk-seller who adds water cannot be punished, unless the admixture renders the milk noxious, or unless his act amounts to cheating under s. 415, *infra*. Fraudulent adulteration of any sort should be made punishable. It is so in most other countries. "Every person who adulterates *or dilutes* any article of food, drink, &c., with a fraudulent intent to sell, or cause or permit it to be sold *as unadulterated or undiluted*, is guilty of a misdemeanor."—N. Y. P. C., 451.

The milk-seller, who sells as pure milk which he has diluted with water, is guilty under s. 417, *infra*. The offence is a grave one, considering the fatal consequences which may result from the admixture

of impure and dirty water. A misdemeanor in New York is punishable with a year's imprisonment and fine.

See s. 521, C. P. C. See notes under s. 415, *infra*.

Sale of noxious food or drink.

273. Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

See s. 521, C. P. C.

The Belgian Penal Code (454) imposes a penalty of from six months to five years' imprisonment, and a fine of from 200 to 2,000 francs, on anyone who mixes with food or drink, intended for sale, substances calculated to cause death or to seriously harm the health, or who knowingly sells the same (455). Section 457 enacts that the license of the convicted person shall be withdrawn, and that he cannot obtain another during the period of his imprisonment; he may also be deprived of all civil rights. The Court is also bound to order that the judgment be posted up in such places as it shall direct, and inserted, in whole or in part, in such papers as it shall name, all to be done at the cost of the accused. Some such stringent provisions as these might check the sale of putrid fish, diseased meat, and filthy-ghee in Indian bazaars. Outside Municipalities there is no agency to prevent the sale of noxious comestibles.

"If the police observe any meat, fish, fruit, food, or vegetables, apparently unfit for consumption, sold or offered for sale in the streets by any person, the names and other particulars are to be obtained, and a report is to be made to the Commissioner. If the hawkers of fish throw the filth or refuse in the streets, the police are to summon for the offence."—Metropolitan Police Orders.

Adulteration of drugs.

274. Whoever adulterates any drug or medical preparation in such a manner as to lessen the efficacy or change the operation of such drug or medical preparation, or to make it noxious, intending that it shall be sold or used for, or knowing it to be likely that it will be sold or used for, any medicinal purpose, as if it had not undergone such adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

275. Whoever, knowing any drug or medical preparation to have been adulterated in such a manner as to lessen its efficacy, to change its operation, or to render it noxious, sells the same, or offers or exposes it for sale, or issues it from any dispensary for medicinal purposes as unadulterated, or causes it to be used for medicinal purposes by any person not knowing of the adulteration, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of adulterated drugs.

276. Whoever knowingly sells, or offers or exposes for sale, or issues from a dispensary for medicinal purposes, any drug or medical preparation as a different drug or medical preparation, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sale of any drug as a different drug or preparation.

The Indian law imposes no restriction on the sale of drugs, except in certain Municipalities. In the Bombay Presidency the prohibition is wider, and licenses are granted for the sale of drugs and poisons. In England (31 and 32 Vict., c. 121, s. 3) only those persons may sell and retail poisons who, before the passing of the Act, were chemists and druggists for compounding prescriptions of duly qualified medical practitioners, or who are assistants and associates duly registered under the Pharmacy Act (15 and 16 Vict., c. 56), or who may be duly registered under this Act. The poison sold must be labelled with the name of the article and the word "Poison," and with the name and address of the seller of the poison. Seller not to sell to any person unknown to him, unless introduced by some person known to the seller. Entry of each sale to be made at the time, stating name and address of purchaser, name and quantity of article sold, purpose for which required. Purchaser to sign his name to such entry. All these restrictions do not apply to medicines supplied by legally qualified medical practitioners. Moreover, all medical practitioners have to register themselves under "the Medical Act" (21 and 22 Vict., c. 90). Some restrictions on the sale of arsenic and other poisons are urgently called for in the mofussil in India.

277. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Fouling the water of a public spring or reservoir.

278. Whoever voluntarily vitiates the atmosphere in any place, so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Making atmosphere noxious to health.

In England every one commits a common nuisance who, for the purposes of trade or otherwise, makes loud noises, or offensive or unwholesome smells in such places and under such circumstances as to annoy any considerable number of persons in the exercise of rights common to all Her Majesty's subjects.—1 Russ. Cr., 436.

"Whenever an indictment shall be found against any one for carrying on a business injurious to the health of those in the vicinity, and the indictment shall charge that any persons have actually suffered in their health from the exercise of such business, the Court may in their discretion enjoin the accused, in such penalty as they may deem reasonable, not to carry on the said business, or to carry it on in a place or in a manner that will not prove injurious to the health of others until the trial; and if a conviction shall be had on such indictment, the injunction shall be perpetual. In like manner, if an indictment be found against any one for carrying on a manufacture of powder or other dangerous operation, a like injunction, and an order for the removal of the dangerous substance to a safe distance, may be made by the Court in which the indictment is found."—Lou. C. P. C., 49, 50. Such orders are made in India under s. 143 of the Criminal Procedure Code.

279. Whoever drives any vehicle, or rides, on any public way in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Rash driving or riding on a public way.

It is not necessary that any hurt should be caused. Under the English Statute (24 and 25 Vict., c. 100, s. 35), it is necessary that bodily harm should be done or caused to be done, and the maximum imprisonment is two years. If grievous hurt were caused, an accused in India might get two years under s. 338; and the same if death were caused under s. 304A, P. C.

"The Police are to notice all cases coming within the law 2 and 3 Vict., c. 47, s. 54 (5), against furious driving of carts and other vehicles, and take the names of the persons, that summonses may be obtained. *If necessary to prevent danger at the time*, the constable is to apprehend the person offending."—Metrop. Police Orders. See s. 336, *infra*. Both sections are cognizable.

Under 32 and 33 Vict., c. 115, licenses to drive hackney and stage carriages are not granted to any person under 21 years, or to any

person who has been convicted of felony; and the Commissioner of Police may, at his discretion, refuse a license to any person who has been convicted of a misdemeanor, or who has had a previous license revoked or suspended. The law in India is going dangerously far in entrusting too much power to unpaid municipal authorities. In England, all powers of licensing are in the hands of the Commissioner of Police or of Justices of the Peace, *e.g.*, licenses for driving, theatres, dancing, keeping public-houses, shoe-blacks, messengers, keeping cows, slaughter-houses, refreshment-houses. They also deal with all nuisances. See Diseases Prevention, Nuisances Removal, Smoke Nuisance, and numerous other Acts.

Rash navigation of a vessel.

280. Whoever navigates any vessel in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Exhibition of a false light, mark or buoy.

281. Whoever exhibits any false light, mark or buoy, intending or knowing it to be likely that such exhibition will mislead any navigator, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Conveying person by water for hire in a vessel overloaded or unsafe.

282. Whoever knowingly or negligently conveys, or causes to be conveyed for hire, any person by water in any vessel, when that vessel is in such a state or so loaded as to endanger the life of that person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Danger or obstruction in a public way or navigation.

283. Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

In France it is a police contravention to diminish *in any way* the utility of a public road. *Held* by the Court of Cassation, that to fill

up a drain by the side of a road constitutes deterioration of the road. —Cass., 16th August 1861. An encroachment *of any sort* is punishable, even the planting of a hedge along the side of a road, which lessens the circulation of air.—Cass., 7th February 1856. There is another most important ruling that if the accused contests the width of the road, he must prove his plea.—*Ibid*, 27th April 1872. See also s. 370, para. 1, of the German Penal Code. This is a most important ruling for India. The Magistrate should decide on the plea.

"Footways are to be kept clear of persons selling articles. If it becomes necessary to remove such persons, unnecessary force is not to be used, and the articles are to be carefully kept without damage at the station until the case is disposed of by the Magistrate. The police are to remove persons carrying iron bars or rods, or other cumbrous articles, on the footways in crowded neighbourhoods, to the danger of passengers, and if necessary, enforce the law 2 and 3 Vict., c. 47, s. 54, cl. 8."—Metrop. Police Orders. See Act V, 1861, s. 34.

The letting off of fireworks on or close to roads may be punishable under this section or s. 290, quite apart from any Municipal bye-law in force. The police may arrest without warrant under ss. 283, 285, 286. The statute-law in England is as follows: "Every person who shall wantonly discharge any firearm, or throw or discharge any stone or other missile in any thoroughfare or public place to the damage or danger of any person (2 and 3 Vict., c. 47, s. 54), wantonly fire off any gun or pistol, or set fire to or wantonly let off or throw any squib, rocket, serpent, or other fire-work whatsoever within 50 feet of the centre of the carriage-way or cart-way of any highway (5 & 6 Wm. IV., c. 50), is liable to a penalty of 40 shillings for every such offence."—See s. 336, *infra*.

In England, every one commits a common nuisance who obstructs any highway by any permanent work or erection thereon or injury thereto, which renders the highway *less commodious to the public than it otherwise would be*; or who prevents them from having access to any part of it by an excessive and unreasonable temporary use thereof, or by so dealing with *the land in the immediate neighbourhood of the highway* as to prevent the public from using and enjoying it securely. Keeping up a hoarding an unreasonable time (*R.* v. *Jones*, 3 Camp., 230); excavating close to a footpath, and leaving it unfenced; blasting stone in a quarry so as to throw stones upon the road (*R.* v. *Mullins*, L. & C., 489) are instances of nuisances to highways.

The Court of Cassation in Paris has given some very useful and important rulings to the effect that when persons are found guilty of encroachment on the road and other obstructions, contrary to Municipal regulations, the Court must, in addition to fine, direct the demolition of the work.—Cass., 26th March 1830; 16th May 1846; 20th February 1847. See also Cass., 19th August 1841. In India, one often sees the anomaly of a man being convicted and fined, and yet not compelled to remove the encroachment or obstruction. The offence is a continuing one, and in municipalities the accused incurs an additional penalty for every day that the order is not obeyed. Outside municipalities, the Magistrate should always pass an order under s. 143 of the Criminal Procedure Code.

In England, laying timber, stone, or rubbish to the injury or personal danger of any person travelling, is a penal offence (5 and 6 Wm. IV., c. 50, s. 72).

In a trial for obstructing a public road, its public character may be shown by proof of long continued use as such, and an order of the county court directing work on it as such.—13 Tex., App., 269.

Whenever there is a conviction under this section, the Magistrate should order the removal of the obstruction. Similarly, on a conviction under s. 278. "Another case in which the Court must interfere to prevent offences is by ordering the removal of all such obstructions in public and common property, and all such establishments injurious to public health, as shall be found by a conviction of the offender to have been made."—Lou. C. P. C., 41. Indian Magistrates should not fail to observe this salutary rule.

As to obstruction of public highways, complaint may be made by any person, and the public generally have the right to remove the obstruction. In a case in North Carolina defendant was charged in a *common law* indictment with a nuisance by obstructing a street, in that he kept a market-cart standing thereon for an hour-and-a-half, and the jury rendered a special verdict finding that he was notified to remove the same, but refused; that he and other persons were accustomed to occupy places on the street with their carts, selling vegetables, &c., but that it was contrary to the municipal regulations, and that, notwithstanding the alleged obstruction, there was the usual passing of vehicles and foot-passengers. *Held*, not to be a nuisance *per se*.—85 N.C., 522.

This was a common law indictment and not under a special Act.

Negligent conduct with respect to any poisonous substance.

284. Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

There are special statutes in England dealing with negligence in selling poisons, *e.g.*, Arsenic Act, 14 and 15 Vict., c. 12; Pharmacy Acts, 31 and 32 Vict., c. 121; 32 and 33 Vict., c. 117; Sale of Food and Drugs Act, 38 and 39 Vict., c. 63.

Negligent conduct with respect to any fire or combustible matter.

285. Whoever does, with fire or any combustible matter any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person; or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, shall be punished with imprisonment of either description for a

term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

A keeps in a warehouse in the City of London large quantities of a mixture of spirits of wine and wood naphtha, forming a substance more inflammable than gunpowder, and of such a nature that a fire lighted by it would be practically unquenchable. A commits a common nuisance, although he uses the most scrupulous care to avoid accidents. —*Lister's Case*, 1 D. & B., C. C., 209.

It is very necessary to punish negligence with fire in a tropical country, where the houses are made of inflammable materials and thatched roofs. In China accidental house-burning is punishable. "Any person who accidentally sets fire to his own house, shall, at the least, be punishable with 40 blows; and if such fire should chance to communicate to any other buildings, public or private, the punishment shall be 50 blows. If the fire occasion the death of any person, the punishment shall be 100 blows." See also the police contraventions in the French Penal Code. If a man's chimney is on fire, he is liable to fine for that act only, and no excuse is admitted.

286. Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to any explosive substance.

287. Whoever does, with any machinery, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligent conduct with respect to any machinery in the possession or under the charge of the offender.

In England, dangerous machinery in factories must be securely fenced (7 and 8 Vict., c. 15, s. 43; 19 and 20 Vict., c. 38, s. 6).

With regard to s. 287 and the preceding and succeeding sections, it is the legal duty of everyone who does any act which without ordi-

nary precautions, is or may be dangerous to human life, to employ those precautions in doing it.—Steph. Dig., art. 216. It is the duty of persons having charge of dangerous things, animals, or machinery, to take care of them.—*R.* v. *Mabbett*, 5 Cox, C. C., 339. It is the duty of people riding, driving, or sailing, to be careful.

Stephen remarks as to these sections: "Many of the sections referred to punish negligent acts dangerous to human life whether death or bodily harm is caused or not. This is highly characteristic of the Code. Its authors have throughout been much impressed with the theory that neither the motive nor the result, but the intention of an act ought to be the measure of its criminality . . . . The section as to machinery is of the most sweeping kind, and goes far beyond any provisions as to fencing machinery in our Factory Acts. For instance, the Factory and Workshop Act, 1878 (41 Vict., c. 16) contains elaborate directions as to fencing machinery in motion, dangerous vats and structures, grindstones, and cleaning machinery in motion, but the utmost consequence of not observing these rules is liability to an inspector's order to fulfil the requirements of the law, in default of which the owner may be fined £10. If death were caused by an omission to perform any of the duties imposed by the Act, the offender would be guilty of manslaughter, and liable to any secondary punishment from penal servitude for life downwards. If bodily injury short of death were caused, he would be liable to an action for damages to the injured person. In India, the leaving of any dangerous machinery unfenced would render the person in default liable to six months' imprisonment, *but no further consequence would follow if death were caused.*" The italics are mine. The great lawyer and jurist, for whom I have the most profound veneration, appears to have fallen into an error, and to have overlooked the provisions of s. 304A. See also ss. 236, 337, 338. Perhaps the above words were written before the passing of Act XXVII, 1870.

Negligence with respect to pulling down or repairing buildings.

288. Whoever, in pulling down or repairing any building, knowingly or negligently omits to take such order with that building as is sufficient to guard against any probable danger to human life from the fall of that building or of any part thereof, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Negligence in building would fall under s. 268, *supra*. The German Penal Code contains a special section on the point: "Whoever in erecting any building shall contravene the rules generally received in architecture to such an extent as to result in danger for others, shall be punished with a fine of 900 marks or imprisonment for one year."—G. P. C., 330.

Negligence with respect to any animal.

289. Whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human

life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Section 475, para. 7, of the French Penal Code, relates to vicious or fierce animals. Dogs which, without provocation, snap or attempt to bite are held to be vicious, and the owner who lets such a dog wander about is liable. Another ruling states that the Court may class a dog in the category of vicious animals, if by their character and bringing up they may be so considered.—Cass., 12th November, 1866.

In England, stray dogs may be detained and sold or destroyed. Any Court of summary jurisdiction may take cognizance of a complaint that a dog is dangerous, and not kept under proper control, and may direct its destruction, or its being kept under proper control.

Two and three Vict., c. 47, s. 54, clause 2, enacts that if anyone sets on or suffers any monkey or other animal in the streets to act, so as to cause danger *or put in fear* any person, horse, or other animal, the party offending is to be apprehended and charged with the offence. Any street musician or person having a monkey in the street is to be cautioned not to commit this offence, and of the consequence if he does.

The following from the Chinese Penal Code (234) is interesting: "When horses, horned cattle, or dogs are viciously inclined, either to kick or bite, or horned cattle to strike with their horns; if the owner does not set a mark on them, and tie them up in the customary manner, or if he does not kill his dogs when they become mad, he shall be punished with 40 blows. If, in consequence of such neglect, any person is killed or wounded, the owner of the animal shall be obliged to redeem himself from the punishment of manslaughter, or man-wounding, by the payment of the legal fine. If any owner of such animals designedly loosens them or encourages them to attack, so as to kill or wound any person, he shall be punishable proportionately less severely by one degree than in the case of killing or wounding such person in an affray."

"In the case of wild and savage animals," says Paterson, "a savage or mischievous temper is presumed to be known to their owner and to all men as a usual accompaniment of such animals; and hence a positive duty is cast on the owner to protect the public against the mischief resulting from such animal being at large. But no mischievous disposition is presumed in the case of animals, which are tame and mild in their general temper. If any peculiar tendency to mischief or injury is found to belong to the animal, and is made known to the owner as a fact, then a like positive duty is cast on him to guard the public against injury from such proclivity. The general rule, then, is that wild animals of a vicious disposition must be kept by the owner in such a place as not to allow them the opportunity of giving vent to their temper and injuring mankind; at least, if he fail to do this, he must bear the entire risk. Indeed such risk may approach the risk of murder."

It will be observed that the words in this section and in s. 282 are "knowingly or negligently," and not "rashly or negligently." The framers of the Code would appear to have followed the English law, which is that, in an action for injury caused by a *savage or wild*

animal, the ground is that the owner wrongfully kept the animal *with knowledge* of its propensity, and that it injured the plaintiff. It is not necessary to allege that it was kept negligently, it being at once presumed that he kept the animal at his own peril (*May* v. *Burdett*, 9 Q. B., 101). In the case of a tame animal, negligence must be proved. A knowledge of the vicious propensity of an ordinarily tame animal may be inferred from circumstances, *e.g.*, that the animal had before attempted to bite people, that persons had remonstrated with the owner about keeping the animal, that the owner himself had warned persons against the animal.

To let loose a fierce animal, so that it kills some one, is murder or manslaughter, according to the conduct shown.—1 Hawk., P. C., c. 31, s. 8.

Punishment for public nuisance.

290. Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

"When a fine is imposed on a corporation, on conviction, it may be collected by virtue of the order imposing it, by the sheriff of the county, out of their real and personal property, in the same manner as upon an execution in a civil action."—N. Y. C. P. C., 750.

There are many municipal offences that may be dealt with under this section. Persons holding licenses from Municipalities for carrying on certain trades and occupations, *e.g.*, tanneries, slaughter-houses, brick-making, are often guilty of public nuisance, and they should be proceeded against under this section. The Municipality itself, if to blame, may be prosecuted.

It will be found that in some acts, owing to imperfect and defective drafting, there are mere prohibitions without penalties being attached. There were one or two sections of this sort in the former Municipal Act V, 1876, B. C. "The principle is now settled," says Kent (Comm., vol. i, 466), that "the statutory prohibition is equally efficacious, and the illegality of a breach of the statute the same, whether a thing be prohibited absolutely or only under a penalty. The New York Revised Statutes (vol. ii, p. 696, s. 39) make the doing an act contrary to a statute prohibition a misdemeanour, though no penalty be imposed." Probably the lowest penalty contained in any particular act should be imposed. The Court of K. B., in *Rex* v. *Robinson* (2 Burr., 799), laid down the distinction, that where a statute creates a new offence, by making unlawful *what was lawful before*, and prescribes a particular sanction, it must be pursued and none other; but where the offence is punishable at common law, and the statute prescribes a particular remedy, the sanction is cumulative, and does not take away the common law punishment, and either remedy may be pursued.

Continuance of nuisance after injunction to discontinue.

291. Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be

punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

Sale, &c., of obscene books.

292. Whoever sells or distributes, imports or prints for sale or hire, or wilfully exhibits to public view, any obscene book, pamphlet, paper, drawing, painting, representation or figure, or attempts or offers so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Exception.—This section does not extend to any representation sculptured, engraved, painted, or otherwise represented on or in any temple, or on any car used for the conveyance of idols, or kept or used for any religious purpose.

See s. 521, C. P. C.

In India the police have no power as in England (20 and 21 Vict., c. 83) to enter and search suspected premises for indecent books, pictures, &c. See ss. 96, 98, C. P. C.

The French and Belgian Penal Codes, in place of the word "obscene," use the words "contrary to good morals" (contraires aux bonnes mœurs). The public exhibition of any disgusting object does not appear to be an offence under the Penal Code, unless it falls under s. 509. Stephen, in a note in his Digest points out that obscenity and immorality are entirely distinct. He submits that a man may maintain doctrines as to marriage, the relation of the sexes, &c., which most people would regard as highly immoral, and yet commit no crime. A, a bookseller, publishes the work of a casuist, which contains amongst other things obscene matter. The work is published in Latin, and appears from the circumstances of its publication to be intended for *bonâ fide* students of casuistry only. A has not committed a misdemeanour. But he does commit an offence if he extracts the obscene matter from the work so published, translates it into English, and sells it as a pamphlet about the streets for the purpose of throwing odium upon the casuists.—See *R.* v. *Hicklin*, L. R., 3 Q. B., 360.

Having in possession obscene book for sale or exhibition.

293. Whoever has in his possession any such obscene book or other thing as is mentioned in the last preceding section for the purpose of sale, distribution, or public exhibition, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Obscene songs.

294. Whoever sings, recites, or utters in or near any public place any obscene song, ballad, or words to the annoyance of others, shall be punished with imprisonment of either description

for a term which may extend to three months, or with fine, or with both.

Keeping lottery-office.

294*A*. Whoever keeps any office or place for the purpose of drawing any lottery not authorized by Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

And whoever publishes any proposal to pay any sum, or to deliver any goods, or to do or forbear doing anything for the benefit of any person, on any event or contingency relative or applicable to the drawing of any ticket, lot, number or figure in any such lottery, shall be punished with fine which may extend to one thousand rupees.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

Injuring or defiling a place of worship with intent to insult the religion of any class.

295. Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons, with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Disturbing a religious assembly.

296. Whoever voluntarily causes disturbance to any assembly lawfully engaged in the performance of religious worship or religious ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

One voluntarily engaging in a fight at a church door during public worship is guilty of a violation of the statute making it an offence to disturb an assemblage of persons met for religious worship.—8 Lea. (Tenn.), 563.

Trespassing on burial places, &c.

297. Whoever, with the intention of wounding the feelings of any person, or of insulting the religion of any person, or with the knowledge that the feelings of any person are likely to be wounded, or that the religion of any person is likely to be insulted thereby, commits any trespass in any place of worship or on any place of sepulture or any place set apart for the performance of funeral rites, or as a depository for the remains of the dead, or offers any indignity to any human corpse, or causes disturbance to any persons assembled for the performance of funeral ceremonies, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

A statute of Richard II. prohibited priests being arrested during divine service. In 1812 it was made a penal offence for any congregation of persons for religious worship (whether dissenters or not) to have the door of the church or chapel locked during divine service.—52 Geo. III., c. 155, s. 11. It was made still more penal to disturb the congregation or the person officiating. To arrest, or molest, or distract a clergyman or other minister during divine service is now a misdemeanour.—24 and 25 Vict., c. 100, s. 36. And to make a riotous, violent or indecent disturbance in any place of religious worship is punishable by fine or by a short imprisonment.—23 and 24 Vict., c. 32, s. 2.

"With the knowledge that the feelings of any person are likely to be wounded." A man is presumed to intend the probable consequences of his acts, so that this section is wide enough to cover cases of digging up dead bodies for purposes of theft. But there might be acts, punishable in England, which would not be punishable under this section, *e.g.*, digging up a dead body for the purpose of dissection. Suppose the case of a pauper dying by the road-side, when on pilgrimage, and being buried by some low-caste persons. If medical students were to dig up the body for dissection, it could scarcely be held that they knew they were likely to wound the feelings of any person. Even to disturb a dead body in England is deemed a misdemeanour, as common decency requires that the body should not be disturbed:—*R.* v. *Lynn*, 2 T. R., 733. Montesquieu mentions a law of the Franks, that a person who had dug up a corpse out of the ground in order to strip it, should be banished from society, and no one suffered to relieve his wants till the relations of the deceased consented to his re-admission.—Montesq. XXX, 19. By the old Roman law it was a capital crime to injure or dig up a dead body laid in its grave, which punishment was sometimes commuted into banishment. Coke observed, that the stealing of a shroud was larceny, because it was the property of the executors; but as to the dead body itself, larceny could not be committed.—3 Inst., 110. In England, the stealing of dead bodies during the present century to supply subjects for medical discovery had become frequent; and a bill was brought into Parliament to allow the dead bodies of those convicted of burglary or highway robbery to be dissected; but the bill was

rejected. At length a statute was passed to enable the dead bodies of convicts, paupers and others to be obtained without any violation of decorum. The Home Secretary is empowered to grant a license, countersigned by two Justices of the Peace, to authorize any qualified practitioner, &c., to carry on the business of anatomy and receive bodies for dissection.—2 and 3 Wm. IV., c. 75.

It is an indictable offence in England to prevent a dead body being buried.—*R.* v. *Young*, 2 T. R., 734.

Cicero said sepulture was so sacred a thing, that all were agreed it should be in consecrated ground. Cic. de Leg., ii, 21. The Christian practice of consecrating places of burial seems not to have existed before the year 570. But in the second century the heathen Emperors treated burial places as sacred, and the violators thereof were guilty of sacrilege.—Cod. Just. ix, 19, 1. The code of Justinian repeated the law of Julian, which ordained the punishment of sacrilege on all who disturbed graves or robbed them of ornaments.

298. Whoever, with deliberate intention of wounding the religious feelings of any person, utters any word or makes any sound in the hearing of that person, or makes any gesture in the sight of that person or places any object in the sight of that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Uttering words, &c., with deliberate intent to wound the religious feelings of any person.

Profane oaths might, under some circumstances, be punished under this section. There is a special statute in England passed in 1745. The Court often imposes a separate fine for each oath. A miller discharged a volley which cost him £2, a by-stander having counted twenty repetitions.—*R.* v. *Scott*, 33 L. J., M. C., 15. In another case a leather-dresser swore 54 oaths and 160 curses without stopping, which cost him £21-8.—*R.* v. *Sparling*, 1 Str., 497.

This section is of course intended to apply only to wanton insults, though the words might cover every attempt made to convince any one that his religious opinions are untrue. Stephen says: "I suspect that the true feelings of a large part of the native population of India were expressed by a Hindoo of considerable position and ostentatiously English tastes, who one day confidentially observed to a high English official, after looking round to see that nobody was listening, 'For my part, Sahib, I think every body who changes his religion, whatever it happens to be, ought to have seven years' rigorous imprisonment. Don't you?'"

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

Of Offences Affecting Life.

Culpable homicide.

299. Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.

Illustrations.

(*a.*) A lays sticks and turf over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z, believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.

(*b.*) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here B may be guilty of no offence; but A has committed the offence of culpable homicide.

(*c.*) A, by shooting at a fowl with intent to kill and steal it, kills B, who is behind a bush; A not knowing that he was there. Here, although A was doing an unlawful act, he was not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Under English law, a child becomes a human being when it has completely proceeded in a living state from the body of its mother, whether it has or has not breathed, and whether the navel string has or has not been divided, and the killing of such a child is homicide whether it is killed by injuries inflicted before, during, or after birth.

In England a person is not deemed to have committed homicide, when the death takes place more than a year and a day after the injury causing it.

In England, to constitute murder, death must happen within a year from the infliction of the bodily injury. Under the Stabbing Act of 2 Jas. I., c. 7, the death must have ensued within six months. To get rid of difficulties like these, the Chinese Code allowed the Magistrates, when inquiring into the case of wounding, to fix the number of days during which the responsibility of the accused should last; and if the injured party died after that period, the offender should not be punished for a capital offence, but according to a lower scale of punishment.—Staunton, Code, 328. This appears to be an excellent and most ingenious rule, as it avoids any rigid arbitrary line. The Magistrate in each case after hearing medical evidence can fix the term, within which if the wounded man dies, the accused is to be considered guilty of murder. The Indian Penal Code has no fixed rule, but in the case of hurt, it enacts that it shall become grievous hurt, if severe bodily pain continues for twenty days. With regard to Explanation 2, or rather the

English law on the subject, Paterson remarks: Little regard is to be paid to any attempt of those charged with murder, to show that the wounded person might have recovered if he had submitted to a surgical operation; or if his wounds had been properly treated; or if the brandy necessarily administered had not entered the lungs and also caused the death. If it happen that the wounded person does not recover, the guilt of murder will be the same, for due care cannot always be secured as a consequence of a dangerous wound, and it is right that the risk should be with him who caused it.—*R.* v. *Tinckler*, 1 East P. C., 230; *R.* v. *West*, 2 C. and K., 784.

"Doing an act."—Does this include the use of words? "If words are used, which are calculated to produce, and do produce, some act which is the immediate cause of death, it is homicide. A blind man, or a stranger in the dark, directed by words only to a precipice where he falls and is killed; a direction verbally given to take a drug that it is known will prove fatal, and which had that effect, are instances."—Lou. P. C., 483. Words which refer to acts done extend also to illegal omissions, s. 32, *supra*. "Homicide by omission only is committed by voluntarily permitting another to do an act (*e.g.*, the case of the blind man walking to a precipice) that must, in the natural course of things, cause his death, without apprising him of his danger, if the act be involuntary, or endeavouring to prevent it, if it be voluntary."—Lou. P. C., 484. Would such an omission be an *illegal* omission in India? Probably not—see definition of "illegal," s. 43, *supra*. In Louisiana "he shall be presumed to have permitted it voluntarily, who omits the necessary means of preventing the death when he knows the danger, and can cause it to be avoided, without danger of personal injury or pecuniary loss."

Explanation 1.—A person who causes bodily injury to another who is labouring under a disorder, disease, or bodily infirmity, and thereby accelerates the death of that other, shall be deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such bodily injury shall be deemed to have caused the death, although by resorting to proper remedies and skilful treatment the death might have been prevented.

The application of this explanation may sometimes work hardship. There are some good rules in the Chinese Penal Code regarding the period of responsibility for the consequences of a wound. "When any person is wounded, the Magistrates shall distinctly examine, and take evidence respecting the wound, in order to ascertain the nature thereof, the manner in which it was inflicted, which having done, they shall according to the circumstances determine the period during which the offender is to be held responsible for the consequences, that is to say, strictly bound both to provide medicinal assistance for the wounded person for such time, and also to answer for the contingency of his death, either on account of such wound or from any external cause operating thereon, previous to the expiration of the period. If the wounded person dies after the expiration of the

period, the offender shall not be held guilty of a capital offence but be punished according to the apparent nature of the wound inflicted."—Chinese P. C., 303. An intermediate period of 40 days is established for gun-shot wounds, and Staunton has remarked that the judicious application of this particular law once very materially helped to extricate the East India Company's representatives in China from very serious difficulties, and from the distressing alternative of either ignominiously sacrificing the life of a British subject or totally abandoning the important commercial interests under their management.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a living child, if any part of that child has been brought forth, though the child may not have breathed or been completely born.

Under this section an offence may amount only to culpable homicide not amounting to murder, although none of the exceptions specified in s. 300 are applicable to the case.—8 W. R., Cr., 47.

Murder.

300. Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or—

2*ndly*.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or—

3*rdly*.—If it is done with the intention of causing bodily injury to any person, and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or—

4*thly*.—If the person committing the act knows that it is so imminently dangerous that it must in all probability cause death, or such bodily injury as is likely to cause death, and commits such act, without any excuse for incurring the risk of causing death or such injury as aforesaid.

Illustrations.

(*a*.) A shoots Z with the intention of killing him. Z dies in consequence. A commits murder.

(*b*.) A, knowing that Z is labouring under such a disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health. But if A, not knowing that Z is labouring under any disease, gives him such a blow as would not in the ordinary course of nature kill a person in a sound state of health, here A, although he may intend to cause bodily injury, is not guilty of murder, if he did not intend to cause

death, or such bodily injury as in the ordinary course of nature would cause death.

(*c.*) A intentionally gives Z a sword-cut or club-wound sufficient to cause the death of a man in the ordinary course of nature. Z dies in consequence. Here A is guilty of murder, although he may not have intended to cause Z's death.

(*d.*) A, without any excuse, fires a loaded cannon into a crowd of persons and kills one of them. A is guilty of murder, although he may not have had a premeditated design to kill any particular individual.

The correlative in the New York Code to the fourth paragraph of s. 300 is as follows:—Homicide is murder when perpetrated by any act imminently dangerous to others, *and evincing a depraved mind, regardless of human life*, although without any premeditated design to effect the death of any particular individual.

Held, in New York that if the killing is not the instant effect of impulse, if there is hesitation to be overcome, a choice made as the result of thought, however short the struggle, brings the case within the definition of murder.—N. Y. Laws, 1873, ch. 644. The *indicia* of express malice may be evidenced by the cool, calm and circumspect deportment of the slayer at the time of killing and immediately before and after it, by absence of exciting cause, by the nature of the deed itself, the instrument used and the manner of using it and by declarations indicative of his motive.—11 Tex., App., 544.

It has been held in America that the "deliberate and premeditated design," which is an essential element of murder in the first degree, must precede the killing for an appreciable space of time sufficient for some reflection and consideration and the formation of a definite purpose. It is immaterial how brief the space of time is, if sufficient for this.—91 N. Y., 211.

The German law as to homicide is briefly as follows:—Voluntary homicide, committed with premeditation, is punishable with death. Homicide, committed voluntarily, but without premeditation, is punishable with a minimum of five years' reclusion. The minimum imprisonment is six months, if the murderer, without any fault of his own, was excited to anger by the person killed, whether by bad treatment, or by a grave insult to him or one of his kindred, and was instantaneously carried away to the commission of the act, or when there are other mitigating circumstances. Whoever causes the death of another by negligence or imprudence is punishable with three years' imprisonment; and if the author of the act was, by reason of his duties, profession or trade, bound to exercise a particular attention, which he has neglected, the maximum imprisonment will be five years.—G. P. C., 211—213, 222.

The definition in the Penal Code of 'Murder' is very wide, and, perhaps, includes cases that ought not to be punished as murder. In China only preconcerted homicide is murder.—China P. C., 282.

The following acts have been held to be murder in England: exposing a sick or helpless person under one's charge to excessive cold or starvation; leaving an infant in the fields so that a kite or pig kills it. See s. 317, Expln., *infra*. "If the child die *in consequence of the exposure*." *Quære.*—Would these words exclude or include the above case? Other acts are: putting a prisoner in an unwholesome place, whereby he catches a distemper; striking a child or apprentice with a deadly weapon; striking a servant with a sword for refusing to

deliver up a key; cruelly ill-using a person so as to bring on some fatal disease. Yet, where facts fail to show cogent evidence of malice, the offence is generally reduced to manslaughter. Where a parent has no food to give to a young child, it is his or her duty to apply to the Parish or Union for relief; and if, *for want of this application*, the child die, the parent is guilty of at least manslaughter.—*R.* v. *Mabbett*, 5 Cox, C. C., 338. In India there are no poor laws, but acts include illegal omissions. See also s. 304A. Fortunately, the giving of alms is still considered by most to be a quasi-religious duty. A mother is liable if she refuses to suckle her child, and the child thereby dies. In all these cases of causing death by starvation or cruelty to prisoners, children, and helpless persons, it is essential that there should be at the time a legal duty on the person charged to supply food, or help, or care to the person whose death is caused.

When culpable homicide is not murder.

Exception 1.—Culpable homicide is not murder if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, or causes the death of any other person by mistake or accident.

The above exception is subject to the following provisoes:—

First.—That the provocation is not sought or voluntarily provoked by the offender as an excuse for killing or doing harm to any person.

Secondly.—That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant.

Thirdly.—That the provocation is not given by anything done in the lawful exercise of the right of private defence.

Explanation.—Whether the provocation was grave and sudden enough to prevent the offence from amounting to murder, is a question of fact.

Illustrations.

(*a.*) A, under the influence of passion excited by a provocation given by Z, intentionally kills Y, Z's child. This is murder, inasmuch as the provocation was not given by the child, and the death of the child was not caused by accident or misfortune in doing an act caused by the provocation.

(*b.*) Y gives grave and sudden provocation to A. A, on this provocation, fires a pistol at Y, neither intending nor knowing himself to be likely to kill Z, who is near him, but out of sight. A kills Z. Here A has not committed murder, but merely culpable homicide.

(*c.*) A is lawfully arrested by Z, a bailiff. A is excited to sudden and violent passion by the arrest, and kills Z. This is murder, inasmuch as the provocation was given by a thing done by a public servant in the exercise of his powers.

(*d.*) A appears as a witness before Z, a Magistrate. Z says that he does not believe a word of A's deposition, and that A has perjured himself. A is moved to sudden passion by these words, and kills Z. This is murder.

(*e.*) A attempts to pull Z's nose. Z, in the exercise of the right of private defence, lays hold of A to prevent him from doing so. A is moved to sudden and violent passion in consequence, and kills Z. This is murder, inasmuch as the provocation was given by a thing done in the exercise of the right of private defence.

(*f.*) Z strikes B. B is by this provocation excited to violent rage. A, a bystander, intending to take advantage of B's rage, and to cause him to kill Z, puts a knife into B's hand for that purpose. B kills Z with the knife. Here B may have committed only culpable homicide, but A is guilty of murder.

If a man finds his wife in the act of committing adultery, and kills her, this will be but manslaughter only, provided the provocation deprived him of self-control; but if a man takes away the life of a woman, even his own wife, because he suspects, however strongly, that she has been engaged in some illicit intrigue, this will be murder.—*R.* v. *Kelly*, 2 C. and K., 814. Similarly, if he kills the adulterer.—*Pearson's Case*, 2 Lewin, C. C., 216.

Under the French Penal Code the murder by the husband of his wife and her paramour, caught in the act of adultery in the conjugal house, is excusable. The term excusable means that, if the crime be punishable with death or imprisonment for life, the punishment is reduced to from one to five years' imprisonment; if it be any other crime, the punishment is six months to two years.—Fr. P. C., 326; Belg. P. C., 413.

As to illustration (*c*), the following illustration is taken from Stephen's Digest:—Police-officers in charge of a Police-van have in custody D, a person charged with felony under 11 Vict., c. 12. A, B, and C, and others assault the van in concert, rescue the prisoner, and shoot one of the policemen dead with a pistol. The warrant under which D was in custody was informal, but not to the knowledge of A, B, and C. A, B, and C, and the others are guilty of murder, and it would have made no difference if they had known of the irregularity of the warrant. This is the case of *R.* v. *Allen and others*, the Fenians, who murdered Brett, the policeman. See French ruling under s. 353, *infra*.

The passion must be such as for the time deprives a man of his reasoning faculty, and such, that reason has not resumed its place. Hale said that no amount of provocation by mere words would justify killing, or reduce murder to manslaughter; but he says it was held that a menace of bodily harm would be such a provocation as to make the offence but manslaughter. Paterson remarks:—"It is obvious, that if a person has been previously assaulted or ill-used to such a degree, that a man of ordinary firmness and discretion would strike his assailant, instead of giving vent to his feelings in words, or waiting for slow redress in a Court of law, and if this is done in a sudden transport of passion, the motive of the act is of a kind very different from that settled malice, which is the indispensable ingredient of murder. The law accepts anger as a lawful state of mind. And yet the circumstances require to be closely scrutinised so as to distinguish unjust from just resentment—a frivolous and petty outburst of passion from grave and well-grounded retaliation—a moderate use of force or of some harmless instrument at hand, from reckless and wanton

use of a deadly weapon—the resort to violence or severity altogether disproportioned to the ground of offence from a moderate chastisement—the heat of the moment from settled revenge after the blood has cooled. . . ." It is difficult to extract rules without knowing the surrounding circumstances: but it has been deemed to be manslaughter only, where the death was caused by the immediate revenge of a gross personal indignity (Kel., 135; 4 Bl. Com., 191); or revenge of a blow on the face drawing blood (Stedman's case, Fost., 292), or revenge of an arrest without proper authority (Buckner's case, Sty., 467).

In China, "when a principal or inferior wife is discovered by her husband in the act of adultery, if such husband at the very time that he discovers kills the adulterer or adulteress or both, he shall not be punishable. If in such a case he does not kill the adulteress, she shall be punished according to the law applicable thereto, and afterwards sold in marriage. The money paid for her shall be a forfeit to Government."—Chinese P. C., 285.

Exception 2.—Culpable homicide is not murder if the offender, in the exercise in good faith of the right of private defence of person or property, exceeds the power given to him by law, and causes the death of the person against whom he is exercising such right of defence, without premeditation and without any intention of doing more harm than is necessary for the purpose of such defence.

Illustration.

Z attempts to horse-whip A, not in such a manner as to cause grievous hurt to A. A draws out a pistol. Z persists in the assault. A believing in good faith that he can by no other means prevent himself from being horse-whipped, shoots Z dead. A has not committed murder, but only culpable homicide.

There are several cases in English law, which were held to be manslaughter, which, however, do not appear to fall under this exception, having regard to the words "in the exercise in good faith." For instance, where a boy, found stealing wood, was beaten (Holloway's case, Cro. Car., 131); where a pickpocket was ducked (Fray's case, 1 Hawk., P. C., c. 31, s. 38); where a father beat a boy who beat his son (Rowley's case, 12 Rep., 87; 1 Hale, 453). Nor would Indian Judges regard such facts as constituting "grave and sudden provocation, such as to deprive of the power of self-control."

Exception 3.—Culpable homicide is not murder if the offender, being a public servant or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he, in good faith, believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will towards the person whose death is caused.

Exception 4.—Culpable homicide is not murder if it is committed without premeditation in a sudden fight in the

heat of passion upon a sudden quarrel, and without the offender having taken undue advantage or acted in a cruel or unusual manner.

Held, in Missouri, that the passion referred to in the phrase "heat of passion" is not limited to that heated state which is produced only by some legal provocation.—74 Mo., 222.

Explanation.—It is immaterial in such cases which party offers the provocation or commits the first assault.

Exception 5.—Culpable homicide is not murder when the person whose death is caused, being above the age of eighteen years, suffers death, or takes the risk of death, with his own consent.

Illustration.

A, by instigation, voluntarily causes Z. a person under eighteen years of age, to commit suicide. Here, on account of Z's youth, he was incapable of giving consent to his own death; A has therefore abetted murder.

As to this exception, Stephen remarks that it "would cover duelling and suttee." The English law regards duelling as murder, where death is caused, though the Courts have in some instances held the crime to be only manslaughter, *e.g.*, when the party killing was acting in self-defence, and neither the aggressor nor the assailed took any advantage by weapons. The seconds in a duel are regarded as equally guilty of murder.—1 Hale, P. C., 443; *R.* v. *Young*, 8 C. & P., 644. Thus the second of the party killed may find himself in the anomalous situation of being indicted for the murder of the very friend whose quarrel he espoused.—*R.* v. *Cuddy*, 1 C. & K., 210.

Hale seemed to think a fatal accident in course of wrestling, cudgelling, foils, and like diversions ought only to be treated as manslaughter; while Foster, treating these as manly diversions, seemed to treat them as mere accidents and nothing more, or nothing but legal negligence. Paterson draws a distinction between wrestling, fencing, foils, on the one hand, and prize-fights, duels, cudgel-playing on the other, as the latter are primarily intended to excite the passions of the parties and spectators to such a degree, that each endeavours to achieve a victory over the other at any cost, and though begun with a show of fair play, often become heated with passion, and develop such malignity of hatred and recklessness of life, that all the elements of criminal disposition and malice are present. See s. 87, *supra*.

Culpable homicide by causing the death of a person other than the person whose death was intended.

301. If a person, by doing anything which he intends or knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he neither intends nor knows himself to be likely to cause, the culpable homicide committed by the offender is of the description of which it would have been if he had caused the death of

the person whose death he intended or knew himself to be likely to cause.

The doctrine inculcated in this section is called by Hale and Foster a transfer of malice. Others describe it as a transmutation or transmigration of motive. Coke and Foster explain it thus: that if the killing take place in course of an illegal act being done, it ought to be treated as if the real intention of the killer had been actually carried out. Where a man gave poison in a roasted apple to his wife, intending to kill her, and she gave it to her child who took it and died in consequence, though the husband being present tried to dissuade his wife from giving the apple to the child, this was held to be murder of the child by the father.—*Saunders'* case, Plowd., 474. Coke calls it coupling the event with the intention, and the end with the cause. *R.* v. *Gore*, 9 Rep., 81A. Hale says that, if a trespasser's arrow glance from a tree and kill a by-stander to whom he intended no hurt, this is manslaughter, as trespass = *malum in se*. But if an unlicensed person shoot at a crow and kill a bystander, this is but chance and no offence, as the want of license is only *malum prohibitum*. This distinction is absurd. Then again it has been said that, if a man kills while committing a felony, it is murder; otherwise, not. For instance, A shoots at a tame fowl, not with intent to steal it, and accidentally kills a man. This is manslaughter. But if he intended to steal the fowl, then the accidental killing would be murder.—*Per* King, C. J., *R.* v. *Woodburn*, 16 St. Tr., 80. Hobbes shows the absurdity of such a rule by saying that if a boy, robbing an orchard, by chance falls from an apple tree, and breaks the neck of a man standing underneath, this is a murder—as if the boy had fallen of malice prepense! Paterson justifies the main rule in this way, that, if A aims at B, misses him, and kills C, he has the guilty mind, and has taken means adequate to give effect to it. The effect on C is the same as if A had intended to murder C. The only difference is an accident occurring between the two acts—and there is no reason why A should profit by such accident. It is better that C should be protected than that A should go without punishment, seeing that in any view A was to blame and C was not. The unintentional killing of one, when aiming at another, is murder or manslaughter, according to whether the primary intention was to murder, or only to do a hurt. See s. 80, *supra*. An act cannot be called a pure accident or misfortune, unless it is done *without any criminal intention or knowledge*, in the doing of a *lawful act in a lawful manner, by lawful means, and with proper care and caution*. But the case of shooting at a fowl with intent to steal it is an instance of the absurdity, barbarity, and inhumanity of the old English criminal law.—*Actus non facit reum nisi mens sit rea*. Phillimore, in his work on jurisprudence, speaks in scathing terms of such writers as Hawkins and Coke, and contrasts their narrow and grotesque absurdities with the humanity and wisdom of the civil law.

302. Whoever commits murder shall be punished with death, or transportation for life, and shall also be liable to fine.

Punishment for murder.

In Belgium, persons under the age of 18 years cannot be sentenced to death.—Belg. P. C., 77. There is no such rule in the French Penal Code.

In France murder is punishable with death, when it has preceded, accompanied, or followed another crime; or when its object has been to facilitate or commit a delict, or to aid the flight or ensure the impunity of the authors or accomplices of such delict. In other cases, the punishment is imprisonment for life.—Fr. P. C., 304.

It was formerly a rule of English law that there could be no conviction for murder, unless the body of the alleged murdered person were first found.—2 Hale, 290; Dig. xxix, 5, 24. But such a rule has long been obsolete. A conviction was upheld, where the deceased was thrown into the sea under circumstances which showed the body to be then dead.—*R.* v. *Hindmarsh*, Leach, 569. See I. L. R., 3 All., 383.

But, until the body has been found, there is no rule of law requiring an absolute presumption of guilt to be drawn from the fact that the prisoner has not accounted for the body, though last traced to his control.—*R.* v. *Hopkins*, 8 C. and P., 591; *R.* v. *Cheverton*, 2 F. and F., 833. See I. L. R., 3 All., 383.

In the recent case of *Reg.* v. *Dudley and Stephens* (Q. B. D., Dec. 9, 1884), it was urged that a man, in order to save his own life, may lawfully take away the life of another, though that other is neither attempting nor threatening the former's life, nor is guilty of any illegal act whatever. The Court remarked that if extreme necessity of hunger does not justify larceny, much less does it justify murder. With regard to the case of the two shipwrecked men on a plank able to sustain only one of them, all that Hawkins says is—"It is said to be justifiable." East leaves the matter undetermined. Bacon is the sole authority for the proposition. If three men can kill a fourth from necessity, who is to be the judge of such necessity? By what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what? It is plain that the principle leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own. In this case (Mignonette case) the weakest, the youngest, the most unresisting was chosen. Was it more necessary to kill *him* than one of the grown men? The answer must be, No. The killing of the boy was, on a special verdict, held to be wilful murder. Grove, J., well remarked:—"If the two accused men were justified in killing Parker, then, if not rescued in time, two of the three survivors would be justified in killing the third; and, of the two who remained, the stronger would be justified in killing the weaker, so that three men might be justifiably killed to give the fourth a chance of surviving."

Punishment for murder by a life-convict.

303. Whoever being under sentence of transportation for life commits murder shall be punished with death.

The French Code is more stringent—"Quiconque, ayant été condamné aux travaux forcés à perpétuité, aura commis un second crime emportant la même peine, sera condamné à la peine de mort."—Fr. P. C., 56, para. 7.

304. Whoever commits culpable homicide not amounting to murder shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine, if the act by which the death is caused is done with the intention of causing death, or of causing such bodily injury as is likely to cause death; or with imprisonment of either description for a term which may extend to ten years, or with fine, or with both, if the act is done with the knowledge that it is likely to cause death, but without any intention to cause death, or to cause such bodily injury as is likely to cause death.

Punishment for culpable homicide not amounting to murder.

If, while engaged in a friendly game of foot-ball, one of the players commits an unlawful act, whereby death is caused to another, he is guilty of manslaughter. In such a case it is immaterial to consider whether the act which caused the death was in accordance with the rules and practice of the game. The act would be unlawful if the person committing it intended to produce serious injury to another, or if, committing an act which he knows may produce serious injury, he is indifferent and reckless as to the consequences.—*R.* v. *Bradshaw*, 14 Cox, C. C., 83.

A, B and C went into a field in proximity to certain roads and houses, taking with them a rifle, which would be deadly at a mile, for the purpose of practising firing with it. B placed a board, which was handed to him by A, in the presence of C, in a tree on the field as a target. All three fired at the board so placed from a distance of about 100 yards. No precautions of any kind were taken to prevent danger from such firing. One of the shots fired by one, though it was not proved by which one of them, killed a boy in a tree in a garden near the field, at a spot distant 393 yards from the firing point. A, B and C were all found guilty by a jury of manslaughter:—*Held* by the Court that A, B and C had been guilty of a breach of duty in firing at the spot in question, without taking proper precautions to prevent injury to others, and were rightly convicted of manslaughter.—*Reg.* v. *Salmon*, 6 Q. B. D., 79.

304*A*. Whoever causes the death of any person by doing any rash or negligent act not amounting to culpable homicide, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Causing death by negligence.

"Every killing of one human being by the act, procurement, or culpable negligence of another (which is not murder, &c.), is manslaughter in the second degree."—N. Y. P. C., 253. Instances of liability given in the code are those of the owners of mischievous animals, of persons navigating vessels, in charge of steam-engines,

of physicians, of persons making or keeping gunpowder contrary to law. Manslaughter in the second degree is punishable with from two to four years' imprisonment in a State prison, or one year in a county jail, and fine.

It is the legal duty of every person who undertakes (except in case of necessity) to administer surgical or medical treatment, or to do any other lawful act of a dangerous character, and which requires special knowledge, skill, attention, or caution, to employ in doing it a common amount of such knowledge, skill, attention, and caution.—Steph. Dig., Art. 217. See *R.* v. *St. John Long*, 4 C. & P., 404, 440.

Everyone upon whom the law imposes any duty, or who has by contract or by any wrongful act taken upon himself any duty, tending to the preservation of life, and who neglects to perform that duty, and thereby causes the death of [or bodily injury to—no authority for this, but Stephen submits it—] any person, commits the same offence as if he had caused the same effect by an act done in the state of mind, as to intent or otherwise, which accompanied the neglect of duty: Provided that no one is deemed to have committed a crime only because he has caused the death of, or bodily injury to, another by negligence which is not culpable. What amount of negligence can be called culpable is a question of degree for the jury, depending on the circumstances of each particular case: Provided also that no one is deemed to have committed a crime by reason of the negligence of any servant or agent employed by him.—Steph. Dig., Art. 211.

It is A's duty, by contract, as the banksman of a colliery shaft, to put a stage on the mouth of the shaft in order to prevent loaded trucks from falling down it. A omits to do so either carelessly or intentionally. A truck falls down the shaft and kills B. A is in the same position as if he had pushed the truck down the shaft carelessly or intentionally.—*R.* v. *Hughes*, D. & B., 248.

A, acting as a surgeon, physician, or midwife, causes the death of a patient by improper treatment, arising from ignorance or inattention. A is not criminally responsible, unless his ignorance, or inattention, or rashness is of such a nature that the jury regard it as culpable under all the circumstances of the case. It makes no difference whether A is or is not a properly qualified practitioner.—*R.* v. *Van Butcher*, 3 C & P., 129; *R.* v. *St. John Long*, 4 C. P., 398, 423; *R.* v. *Williamson*, 3 C. & P., 635.

Every person under a legal duty, whether by contract or by law, or by the act of taking charge, wrongfully or otherwise, of another person, to provide the necessaries of life for such other person, is criminally responsible for the neglect of that duty, if the person to whom the duty is owing, is, from age, health, insanity, or any other cause, unable to withdraw himself from the control of the person from whom it is due, but not otherwise.—Steph. Dig., Art. 213.

Dr. Wharton classifies negligent homicide under the following heads:—

1. Use of dangerous things.
2. Dropping things on roads.
3. Management of railroads and steamers.
4. Riding and driving.
5. Care of dangerous animals.
6. Care of children, &c.
7. Care of medical men.
8. Dangerous machinery.
9. Athletic sports.

If a person delegates the discharge of the duty mentioned above to his wife or to a servant, and supplies such wife or servant with the

means of discharging the duties so delegated, it is the legal duty of such wife or servant to discharge such duties, and it is the legal duty of the man who delegates them to use ordinary care to see that they are properly discharged.—Steph. Dig., Art. 214. See *R.* v. *Bubb*, 4 Cox, C. C., 455 ; 1 Russ. Cr., 681 ; *R.* v. *Hook*, 4 Cox, 455.

In China, if an unskilful practitioner prescribes contrary to the established rules and practice, and thereby kills the patient, he is allowed to redeem himself from the punishment of homicide, as in cases purely accidental, by payment of the established fine, but he is obliged to quit his profession for ever.—Chinese P. C., 297.

Held, in America, that the implied obligation of a surgeon is simply to use reasonable care and skill.—14 Neb., 403.

The Louisiana Penal Code divides negligent homicide into—

(1) negligent homicide in the performance of lawful acts—(i) in first degree ; (ii) in second degree:

(2) negligent homicide in the performance of unlawful acts.

As to the first class, want of due precaution is an element of both subheads ; but, in the first, the danger of causing death must not be, and in the second it must be, apparent. Imprisonment in first case two months to one year ; in the second case two to four years. The want of care and precaution distinguishes negligent from excusable homicide, and places it in the first or incipient degree of culpability. Example—When death is casually inflicted by the discharge of firearms which are believed not to be loaded, *without examining whether they are so or not*, it constitutes the offence. As to apparent risk, the common case of a workman throwing materials from the roof of a house is an example. The criminality of the homicide depends on the circumstance of the *place* in which the act is done. If in the country, or other unfrequented place, without previous inquiry or examination whether anyone be in the way, it is ranked as negligent homicide of first degree (risk not apparent) ; if in the streets of a populous city, without the precautions required by this code, or by the police of the city, it is negligent homicide in the second degree (risk apparent).

As to the second class, negligent homicide in the performance of unlawful acts, one-fifth is added to the punishment, if the act be an injury ; one-fourth, if it be a misdemeanor other than an offence against the person ; one-half, if an offence against the person (except murder) ; punishment to be doubled, if it be a crime punishable with hard labour for less than life and so on. See Lou. P. C., 515, 533. The rule about apparent risk may be usefully applied by Indian Magistrates. There is great diversity in the application of s. 304A, and the above lucid exposition of the *ratio decidendi* may aid Indian judges in the decision of doubtful cases.

In England, in actions for compensation for negligent killing; the rule is that the negligence of the defendant must be the sole, or all but the sole, cause of the accident, and nothing in the conduct of the deceased or injured person must have been a proximate cause of it, or, as it is called, a contributory cause.

Negligence implies a want of wilful intention. It consists in the absence of a specific intention to injure, but in the presence of a reckless or careless disposition as to whether the act was likely to do injury or not, or at least in the absence of a general knowledge, such as a reasonable person would have that the act was dangerous, and yet where no precaution to guard against that danger was taken.

The law relating to actions for negligence is to a great extent applicable to criminal prosecutions. The line between them is very fine. Sections 304A, 336—338, Penal Code, are intended to meet a numerous class of cases which are provided for in England by special statutes. Sections 269, 279, 280, 282, 284—289, are in the same category. The *casa causans* must be distinguished from the *causa sine quâ non*. Only the proximate cause is looked to as a ground of liability. This, however, is not a universal rule, as there are cases where the original cause continues to be the dominant cause all through a variety of intermediate events. Thus, if the negligence of the driver of a coach causes the horses to run away, and a passenger, reasonably apprehending danger, jump off to save his life, and thereby break his leg, the first negligence is deemed the dominant cause of this broken leg.—*Jones* v. *Boyce*, 1 Stark, 493. In some cases negligence is presumed, as where a sack falls from a top window into the street. The maxim is *res ipsa loquitur*, and it lies on the defendant to explain the fact away.

The Indian law does not specifically provide for cases in which children are neglected and half starved by their parents, but see ss. 336—338 and this section. See s. 32, *supra*. 31 and 32 Vict., c. 122, s. 37 enacts that "when any parent wilfully neglects to provide adequate food, clothing, medical aid, or lodging for his child being in his custody, under the age of 14 years, whereby the health of such child has been or is likely to be seriously injured, he may be sentenced by any two Justices to imprisonment for six months with or without hard labour."

The word act in this section, and also in ss. 336, 337, 338, should be held to include an illegal omission. See s. 32, *supra*. But some sections of the Code, *e.g.*, s. 268, specifically include the illegal omission. 24 and 25 Vict., c. 100, s. 26, makes it an offence not to provide apprentices or servants with food, whereby life is endangered, or health is or is likely to be permanently injured.

M was convicted of the manslaughter of his son, a child of tender years. The child died of confluent small-pox, and the prisoner, though able to do so, did not, owing to certain religious views he held, employ any medical practitioner, nor afford to the child during its illness any medical aid or attendance. It was proved that proper medical aid and attendance might have saved or prolonged the child's life, and would have increased its chance of recovery, but that it might have been of no avail; and there was no positive evidence that the death was caused or accelerated by the neglect to provide medical aid or attendance. *Held*, that under the above circumstances the conviction could not be sustained.—*Reg.* v. *Morby*, 8 Q. B. D., 571.

The mere fact of a civil wrong committed by one person against another ought not to be used as an incident which is a necessary step in a criminal case, apart from the question of criminal negligence. Therefore, the mere fact of a person wrongfully taking up a box from a refreshment stall on a sea pier, and wantonly throwing it into the sea, and thereby unintentionally causing the death of another bathing in the sea, is not *per se*, and apart from the question of negligence, sufficient to constitute the offence of manslaughter.—*Reg.* v. *Franklin*, 15 Cox, C. C., 163.

With regard to the negligence of physicians and surgeons, the rule is that any person, entering a learned profession, undertakes to bring to the exercise of it a reasonable degree of care and skill. If anyone

suffers pain on death from the negligence of these skilled operators, the main question involved is whether the treatment showed *ordinary professional skill.* In England, the legislature has come to the assistance of the common law by requiring all who practise surgery and physic as a profession to be registered as such. False pretenders to the qualification are liable to a penalty. But the causing of death by an unskilful operation is generally deemed misadventure in the absence of the grossest recklessness and ignorance.

Abetment of suicide of child or insane person.

305. If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication, commits suicide, whoever abets the commission of such suicide shall be punished with death or transportation for life or imprisonment for a term not exceeding ten years, and shall also be liable to fine.

Abetment of suicide.

306. If any person commits suicide, whoever abets the commission of such suicide shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Attempt to murder.

307. Whoever does any act with such intention or knowledge, and under such circumstances, that if he by that act caused death he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to transportation for life, or to such punishment as is hereinbefore mentioned.

Attempts by life-convicts.

When any person offending under this section is under sentence of transportation for life, he may, if hurt is caused, be punished with death.

Illustrations.

(*a*) A shoots at Z with intention to kill him, under such circumstances that, if death ensued, A would be guilty of murder. A is liable to punishment under this section.

(*b*.) A, with the intention of causing the death of a child of tender years, exposes it in a desert place. A has committed the offence defined by this section, though the death of the child does not ensue.

(*c*.) A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence. A fires the gun at Z. He has committed the offence defined in this section; and if by such firing he wounds Z, he is liable to the punishment provided by the latter part of this section.

(*d.*) A, intending to murder Z by poison, purchases poison and mixes the same with food which remains in A's keeping; A has not yet committed the offence defined in this section. A places the food on Z's table or delivers it to Z's servants to place it on Z's table. A has committed the offence defined in this section.

"Does any act." 'Act includes illegal omission,' s. 32, *supra*, but in England it has been held that not only must there be an overt act, that is, some means actually used to give effect to the intent, but those means must be reasonably calculated to effectuate the intent.—*R.* v. *Empson*, Leach, 224; *R.* v. *Lovel*, 2 M. & Rob., 39. To administer poison means to put it in such a situation that it will, in the course of things in all probability, be taken by the person intended.

Attempt to commit culpable homicide.

308. Whoever does any act with such intention or knowledge, and under such circumstances that if he by that act caused death he would be guilty of culpable homicide not amounting to murder, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if hurt is caused to any person by such act, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Illustration.

A, on grave and sudden provocation, fires a pistol at Z, under such circumstances that if he thereby caused death he would be guilty of culpable homicide not amounting to murder. A has committed the offence defined in this section.

Attempt to commit suicide.

309. Whoever attempts to commit suicide, and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year, *or with fine, or with both.*

"Does any act towards the commission of such offence." In New York "every person who, with intent to take his own life, commits upon himself *any act dangerous to human life*, is guilty of attempting suicide."—N. Y. P. C., 229. Punishment: imprisonment for two years, or fine of 1,000 dollars, or both.

Held, no attempt, where a woman ran towards a well with the intention of committing suicide and was caught before she got there. —I. L. R., 8 Mad., 5. It was held that there was still a *locus pœnitentiæ*, and that the woman might have changed her mind before jumping into the well. In India, the police often send up cases under this section, which are in reality nothing but acts of intimidation by wives towards husbands. A wife, who threatens to commit suicide, may be guilty under s. 503, *infra*, and in China such threats are commonly punished.

Thug.

310. Whoever at any time after the passing of this Act shall have been habitually associated with any other or others for the purpose of committing robbery or child-stealing, by means of or accompanied with murder, is a thug.

Punishment.

311. Whoever is a thug shall be punished with transportation for life, and shall also be liable to fine.

OF THE CAUSING OF MISCARRIAGE, OF INJURIES TO UNBORN CHILDREN, OF THE EXPOSURE OF INFANTS, AND OF THE CONCEALMENT OF BIRTHS.

Causing miscarriage.

312. Whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—A woman who causes herself to miscarry is within the meaning of this section.

In Louisiana, "he who designedly furnishes or administers the means intended to produce abortion, when they are administered, but fail in their effect, shall suffer one-half the punishment that the crime would have incurred, had it been completed."—Lou. P. C., 471.

As to attempts to procure miscarriage, the thing administered or prescribed must be noxious in its nature; but it is not necessary to prove that it will produce that effect. So held in New Jersey.—43 N. J. L., 86.

In Massachusetts it is not necessary to the maintenance of an indictment for an attempt to procure the miscarriage of a woman that she should in fact be pregnant.—*Commonwealth* v. *Taylor*, 132 Mass., 261.

The general opinion among the ancients was that abortion was no offence. In Greece, Aristotle advised that abortion should be enforced by law, when a population had exceeded certain assigned limits. In Formosa, where males were prohibited from marrying before 40, and females before 36, if a female under that age was pregnant, she was, by order of the Magistrate, obliged to submit to abortion.—Ferg. Civ. Soc., 233. But the Christian writers denounced the practice as a crime. The framers of the Indian Penal Code have very wisely left ss. 312—316 non-cognizable by the police. The terrible evils of espionage in such matters, the scandal attending inquiry, the opportunities for threats, corruption and extortion, are evils which outweigh the offence itself.

313. Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing miscarriage without woman's consent.

314. Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Death caused by an act done with intent to cause miscarriage.

And if the act is done without the consent of the woman, shall be punished either with transportation for life, or with the punishment above-mentioned.

If act done without woman's consent.

Explanation.—It is not essential to this offence that the offender should know that the act is likely to cause death.

315. Whoever, before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.

Act done with intent to prevent a child being born alive, or to cause it to die after birth.

In England it has been held, that if the child was maliciously killed in the act of being born, though before it breathed, this would be murder.—*R.* v. *Senior*, Mood. C. C., 346. It was murder if the child had in consequence of some potion been prematurely born alive, and then had died immediately.—*R.* v. *West*, 2 C. & K., 784. In order to establish the crime of murder of an infant, it is necessary to show that the child was completely born, and had an independent circulation.—*R.* v. *Wright*, 9 C. & P., 754. But it is not necessary that the umbilical cord should have been separated; or, if completely born that the child should have breathed thereafter.—*R.* v. *Sallis*, 7 C. & P., 850.

316. Whoever does any act under such circumstances that if he thereby caused death he would be guilty of culpable homicide and does by such act cause the death of a quick unborn child, shall be

Causing death of a quick unborn child by an act amounting to culpable homicide.

punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Illustration.

A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured, but does not die; but the death of an unborn quick child with which she is pregnant is thereby caused. A is guilty of the offence defined in this section.

Where a child *has been born*, and has an independent circulation of the blood, even though the umbilical cord be not severed, so as to fulfil the description of a living human being, the killing of such child is murder.—(*R.* v. *Enoch*, 5 C. & P., 539; *R.* v. *Wright*, 9 C. & P., 754; *R.* v. *Sellis*, 7 C. & P., 850.) This section refers to a "quick unborn child."

Exposure and abandonment of a child under twelve years by parent or person having care of it.

317. Whoever, being the father or mother of a child under the age of twelve years, or having the care of such child, shall expose or leave such child in any place with the intention of wholly abandoning such child, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Explanation.—This section is not intended to prevent the trial of the offender for murder or culpable homicide as the case may be, if the child die in consequence of the exposure.

Section 221 of the German Penal Code enacts that whoever exposes a person who, by reason of his youth, infirmities or maladies, cannot help himself, or abandons without relief any such person placed under his charge, shall be punished with at least three months' imprisonment. If the father or mother of a child commits the act of abandonment, the punishment shall be at least six months.

Section 349 of the French Penal Code punishes with from six months to two years' imprisonment anyone who exposes and abandons *in a solitary place* a child below the age of seven years. The Court of Cassation has ruled that the exposure and the abandonment must be simultaneous. If the offender be the guardian (includes natural mother) or instructor of the child, the punishment is from two to five years' imprisonment. If the place, in which the child is abandoned, is not solitary (en un lieu non solitaire), the punishment is from three months to one year. The French Code uses the words "expose and abandon," the Belgian Code (358) uses the word "abandon" (délaissé) only. The New York Code (332) is to the same effect, except that the limit of age is six years. "Every parent of any child, who wilfully omits, without lawful excuse, to perform any duty imposed upon him by law (consult the Civil Code) to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of misdemea-

nour."—*Ibid*, 333. Unlawful abandonment or exposure of a child under two years, whereby its life is endangered, or health is or is likely to be permanently injured, is punishable with five years' penal servitude in England.

The exposure of children was the prevailing and stubborn vice of antiquity, and was only eradicated by the Christian religion and capital punishments.—Gib. R. E., c. 44. In A.D. 374, Valentinian made it a capital offence; and in 529 Justinian decreed, that the father lost all legitimate authority over his child by exposing it.

In England the word "exposure" was held to meet the case of a mother who sent a child five weeks' old in a hamper to be carried by railway without disclosing the contents; and the case of a father, who lived separately from the mother, and who, on the mother leaving the child outside his door, did nothing and left it lying there.—*R.* v. *White*, L. R., 1 C. C. R., 311.

Concealment of birth by secret disposal of dead body.

318. Whoever, by secretly burying or otherwise disposing of the dead body of a child, whether such child die before or after or during its birth, intentionally conceals or endeavours to conceal the birth of such child, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Under the English Statute (24 and 25 Vict., c. 100, s. 60), the expression "delivered of a child" does not include delivery of a fœtus which has not reached the period at which it might have been born alive. The words "secret disposition of the body" include cases in which the body is placed in a situation where it is not likely to be found except by accident, or upon search, although the body is in no way concealed from any one who happens to go to that place.—*R.* v. *Berriman*, 6 Cox, C. C., 388; *R.* v. *Brown*, L. R., 1 C. C. R., 244.

The New York P. C., 318, makes punishable "every person who endeavours to conceal the *still* birth of any child, which if born alive would be a bastard, or the death of any such child under the age of two years." The wording of the Indian Code appears to contemplate the death of the child *soon* after birth; but no doubt it would include cases in which the child may die at a later stage.

By the English law, the disposing of the body need not be a final disposal, if it be such as to be inconsistent with the intention to make known its final disposition.—*R.* v. *Opie*, 8 Cox, C. C., 332. Thus it is enough, if it be put in a field, where there was no thoroughfare, and out of the way of ordinary frequenters of the field.—*R.* v. *Brown*, L. R., 1 C. C., 224. Yet the disposal must be a positive act done, in contradistinction to merely dropping the child at birth, and leaving it where it fell.—*R.* v. *Coxhead*, 1 C. & K., 623. It has been ruled, that there may be this concealment, though a confidant may have been privy to the fact of the birth, and even to the crime itself; for the concealment obviously means concealment from those in the habit of meeting with the prisoner in daily life.—*R.* v. *Morris*, 2 Cox, C. C., 489.

OF HURT.

319. Whoever causes bodily pain, disease, or infirmity to any person is said to cause hurt.

Hurt.

320. The following kinds of hurt only are designated as 'grievous':—

Grievous hurt.

First.—Emasculation.

Secondly.—Permanent privation of the sight of either eye.

Thirdly.—Permanent privation of the hearing of either ear.

Fourthly.—Privation of any member or joint.

Fifthly.—Destruction or permanent impairing of the powers of any member or joint.

Sixthly.—Permanent disfiguration of head or face.

Seventhly.—Fracture or dislocation of a bone or tooth.

Eighthly.—Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain, or unable to follow his ordinary pursuits.

The definition of grievous hurt is adopted from the French Code Pénal, Art. 309. "I do not think it happy," remarks Stephen, "as it attempts to define what is essentially indefinite. The English 'grievous bodily harm' is far better. The artificial and arbitrary character of the enactment may be illustrated in many ways. A slight injury to an artist's forefinger, or to a surgeon's wrist, might easily prevent him from following his usual pursuits for three weeks, and so amount to grievous hurt, while an injury which caused a man to be afflicted with *tic douloureux* for the rest of his life would not be considered grievous." In making these remarks, Sir James Stephen appears to overlook the fact that simple hurt is punishable with as much as one year's imprisonment.

321. Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person, is said "voluntarily to cause hurt."

Voluntarily causing hurt.

Ruled by the Court of Cassation that s. 211 of the French Penal Code (relating to hurt) applies to the husband who beats his wife, and to parents who exceed their right of correction, and use excessive violence towards their children.

"Causes hurt to any person." Do these words include the case of a man causing hurt to himself? It may be necessary in some cases to punish self-mutilation. The fear of conscription causes men to mutilate themselves even at the present day in such countries as Egypt, Russia and France. Malingering for alms might also be made punishable.

Article 207 of Stephen's Digest states that no one has a right to consent to the infliction upon himself of bodily harm amounting to a maim, for any purpose injurious to the public. A gets B to cut off A's right hand, in order that A may avoid labour and be enabled to beg. Both A and B commit an offence.—1, Inst., 107a, b.

BENGAL SECRETARIAT

"Every person who, with design to disable himself from performing any legal duty, existing or anticipated, inflicts upon himself any injury whereby he is so disabled, is guilty of maiming . . . . Every person who thus maims himself, with intent to avail himself of such injury, to excite sympathy, or to obtain alms, or any charitable relief, is punishable with one year's imprisoment and fine."—N. Y. P. C., 264, *seqq.* "It is curious to observe," says Foderé (Tr. de Med. Leg. ii, 480, quoted in Beck's Med. Jur.), "how many young men have worn convex glasses in order to acquire *myopia* or near-sightedness." Mr. Lane, writing in 1834, says: "There is seldom to be found, in any of the villages, an able-bodied youth or young man who has not had one or more of his teeth broken out (that he may not be able to bite a cartridge), or a finger cut off, or an eye pulled out or blinded, to prevent his being taken for a recruit."—Lane's Mod. Egyp., 294. Under the New York Penal Code maiming includes injury which "disfigures personal appearance, or seriously diminishes physical vigour."

322. Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said "voluntarily to cause grievous hurt."

Voluntarily causing grievous hurt.

Explanation.—A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt if, intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind.

Illustration.

A, intending or knowing himself to be likely permanently to disfigure Z's face, gives Z a blow, which does not permanently disfigure Z's face, but which causes Z to suffer severe bodily pain for the space of twenty days. A has voluntarily caused grievous hurt.

Under this section or s. 321 (read with s. 511) will come the placing stones and articles on railways, removing signals, causing other interruptions, throwing stones at railway carriages so as to endanger the safety of railway travellers (24 and 25 Vict., c. 100, ss. 32, 33), when no actual harm results. See also the Railway Act, and ss. 307, 308, *supra*. "Whoever does any act." See s. 32, *supra*. "Act includes illegal omission." It is a misdemeanour in England, if a master or mistress, being legally bound to supply food, or clothing, or lodging, by neglect or refusal causes bodily harm, so as to produce permanent injury to a servant or apprentice.—24 and 25 Vict., c. 100, s. 26. See ss. 336—338, *infra*.

323. Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term

Punishment for voluntarily causing hurt.

which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Voluntarily causing hurt by dangerous weapon or means.

324. Whoever, except in the case provided for by section 334, voluntarily causes hurt, by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Magistrates sometimes inflict very inadequate sentences in cases of wounding. In Germany, if hurt has been caused by means of a weapon, and especially by a knife or other dangerous instrument, the imprisonment must be at least two months.—G. P. C., 223A.

Punishment for voluntarily causing grievous hurt.

325. Whoever, except in the case provided by section 335, voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

There are some sections of the Code, under which *some* sentence of imprisonment is compulsory, but the Code nowhere fixes a minimum less than which cannot be imposed. In Italy the following sorts of hurt are punishable with *not less than* five and not more than ten years: (1) hurt which causes a weakening of the mental facilities, or a physical malady, certainly or probably incurable; (2) hurt which causes the loss of a sense, of a hand, of a foot, of the use of speech, or of the capacity of preservation; (3) hurt to a woman who is *enceinte*, and which causes abortion, provided the fact of pregnancy.

Voluntarily causing grievous hurt by dangerous weapon or means.

326. Whoever, except in the case provided by section 335, voluntarily causes grievous hurt, by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with

transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort property or to constrain to an illegal act.

327. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal or which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Causing hurt by means of poison, &c., with intent to commit an offence.

328. Whoever administers to, or causes to be taken by, any person any poison or any stupefying, intoxicating, or unwholesome drug or other thing, with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence, or knowing it to be likely that he will thereby cause hurt shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

In England, where the poisoning is with intent to injure, aggrieve, or annoy, it is a misdemeanour.—24 and 25 Vict., c. 100, s. 24. And it has been held that to administer a drug (*e.g.*, cantharides) to excite the sensual passion is to aggrieve and annoy.—*It.* v. *Wilkins*, 1 L. and C., 89.

Voluntarily causing grievous hurt to extort property or to constrain to an illegal act.

329. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do anything which is illegal, or which may facilitate the commission of an offence, shall be punished with transportation for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to extort confession, or to compel restoration of property.

330. Whoever voluntarily causes hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an

offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Illustrations.

(*a.*) A, a Police-officer, tortures Z in order to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

(*b.*) A, a Police-officer, tortures B to induce him to point out where certain stolen property is deposited. A is guilty of an offence under this section.

(*c.*) A, a Revenue-officer, tortures Z in order to compel him to pay certain arrears of revenue due from Z. A is guilty of an offence under this section.

(*d.*) A, a zemindar, tortures a ryot in order to compel him to pay his rent. A is guilty of an offence under this section.

Voluntarily causing grievous hurt to extort confession or to compel restoration of property.

331. Whoever voluntarily causes grievous hurt for the purpose of extorting from the sufferer, or from any person interested in the sufferer, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing hurt to deter public servant from his duty.

332. Whoever voluntarily causes hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

333. Whoever voluntarily causes grievous hurt to any person being a public servant in the discharge of his duty as such public servant, or with intent to prevent or deter that person or any other public servant from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by that person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Voluntarily causing grievous hurt to deter public servant from his duty.

334. Whoever voluntarily causes hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Voluntarily causing hurt on provocation.

335. Whoever voluntarily causes grievous hurt on grave and sudden provocation, if he neither intends nor knows himself to be likely to cause grievous hurt to any person other than the person who gave the provocation, shall be punished with imprisonment of either description for a term which may extend to four years, or with fine which may extend to two thousand rupees, or with both.

Causing grievous hurt on provocation.

Explanation.—The last two sections are subject to the same provisoes as Exception 1, section 300.

336. Whoever does any act so rashly or negligently as to endanger human life or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred and fifty rupees, or with both.

Punishment for act which endangers life or the personal safety of others.

See notes under s. 304A, *supra*.

The prisoner was the first, or almost the first to leave the gallery of a theatre at the close of the performance; he ran down the stairs, wilfully put out the gas, and placed an iron bar across the doorway. This caused a panic among the persons when leaving the gallery, and several of them were seriously injured through the pressure of

the crowd. *Held*, that the prisoner was properly convicted of unlawfully and maliciously doing and inflicting grievous bodily harm.—*Reg.* v. *Martin*, 8 Q. B. D., 54. This act might also be punishable under s. 268, *supra*. If any one were killed, the offence would fall under s. 304A, and might come under the second para. of s. 304.

Causing hurt by an act which endangers life or the personal safety of others.

337. Whoever causes hurt to any person by doing any act so rashly or negligently as to endanger human life, or the personal safety of others, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

The German Penal Code is wider. Section 230 imposes a fine of 900 marks or imprisonment up to two years on anyone who, by negligence or imprudence, causes hurt to another: the imprisonment may be three years, if the author of the hurt has neglected any particular attention which he was bound to observe, by reason of his duties, profession, or trade. In the former case, there can only be a prosecution on the complaint of the person injured, and this rule applies to voluntary hurt of a slight character.

Causing grievous hurt by an act which endangers life or the personal safety of others.

338. Whoever causes grievous hurt to any person by doing an act so rashly or negligently as to endanger human life, or the personal safety of others shall be punished with imprisonment of either description for a term which may extend to two years, or with fine which may extend to one thousand rupees, or with both.

WRONGFUL RESTRAINT AND WRONGFUL CONFINEMENT.

Wrongful restraint.

339. Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed is said wrongfully to restrain that person.

Exception.—The obstruction of a private way over land or water, which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

Illustration.

A obstructs a path along which Z has a right to pass, A not believing in good faith that he has a right to stop the path. Z is thereby prevented from passing. A wrongfully restrains Z.

Would mere threats [see s. 340 (*b*)] come under the head of 'voluntary obstruction'? Under the Louisiana Penal Code, there may

be false imprisonment by threats, provided they are "such as would materially operate on a person of ordinary firmness, and inspire a just fear of great injury to person, reputation, or fortune. The age, sex, state of health, temper and disposition of the party complaining must be taken into consideration; and the threat must be to inflict the injury, if the person departs from the bounds prescribed.'—Lou. P. C., 447.

Wrongful confinement.

340. Whoever wrongfully restrains any person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits is said "wrongfully to confine" that person.

Illustrations.

(*a.*) A causes Z to go within a walled space, and locks Z in. Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z.

(*b.*) A places men with firearms at the outlets of a building, and tells Z that they will fire at Z if Z attempts to leave the buildings. A wrongfully confines Z.

Punishment for wrongful restraint.

341. Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Punishment for wrongful confinement.

342. Whoever wrongfully confines any person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Wrongful confinement for three or more days.

343. Whoever wrongfully confines any person for three days or more shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Wrongful confinement for ten or more days.

344. Whoever wrongfully confines any person for ten days or more shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement of person for whose liberation a writ has been issued.

345. Whoever keeps any person in wrongful confinement, knowing that a writ for the liberation of that person has been duly issued, shall be punished with imprisonment of either description for

a term which may extend to two years, in addition to any term of imprisonment to which he may be liable under any other section of this Code.

Wrongful confinement in secret.

346. Whoever wrongfully confines any person in such manner as to indicate an intention that the confinement of such person may not be known to any person interested in the person so confined, or to any public servant, or that the place of such confinement may not be known to or discovered by any such person or public servant as hereinbefore mentioned, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to any other punishment to which he may be liable for such wrongful confinement.

Wrongful confinement for the purpose of extorting property or constraining to an illegal act.

347. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or from any person interested in the person confined, any property or valuable security, or of constraining the person confined, or any person interested in such person, to do anything illegal or to give any information which may facilitate the commission of an offence, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Wrongful confinement for the purpose of extorting confession, or of compelling restoration of property.

348. Whoever wrongfully confines any person for the purpose of extorting from the person confined, or any person interested in the person confined, any confession or any information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the person confined, or any person interested in the person confined, to restore or to cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

OF CRIMINAL FORCE AND ASSAULT.

Force.

349. A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion or change of motion or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling; provided that the person causing the motion, or change of motion, or cessation of motion causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described:—

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion, or change, or cessation of motion takes place without any further act on his part or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move.

Quære.—Would this section cover the case of an injury caused by falling into a pit or over an obstruction intentionally dug or placed in a highway? See Lou. P. C., 408.

Criminal force.

350. Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause, injury, fear, or annoyance to the person to whom the force is used, is said to use criminal force to that other.

Illustrations.

(*a.*) Z is sitting in a moored boat on a river. A unfastens the moorings, and thus intentionally causes the boat to drift down the stream. Here A intentionally causes motion to Z, and he does this by disposing substances in such a manner that the motion is produced without any other act on any person's part. A has therefore intentionally used force to Z; and if he has done so without Z's consent in order to the committing of any offence, or intending or knowing it to be likely that this use of force will cause injury, fear or annoyance to Z, A has used criminal force to Z.

(*b.*) Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z, by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or

knowing it to be likely that he may thereby injure, frighten or annoy Z, A has committed criminal force to Z.

(*c.*) Z is riding in a palanquin. A, intending to rob Z, seizes the pole and stops the palanquin. Here A has caused cessation of motion to Z, and he has done this by his own bodily power. A has therefore used force to Z; and as A has acted thus intentionally without Z's consent, in order to the commission of an offence, A has used criminal force to Z.

(*d.*) A intentionally pushes against Z in the street. Here A has, by his own bodily power, moved his own person so as to bring it into contact with Z. He has therefore intentionally used force to Z, and if he has done so without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, he has used criminal force to Z.

(*e.*) A throws a stone, intending or knowing it to be likely that the stone will be thus brought into contact with Z, or with Z's clothes, or with something carried by Z, or that it will strike water and dash up the water against Z's clothes or something carried by Z. Here, if the throwing of the stone produce the effect of causing any substance to come into contact with Z or Z's clothes, A has used force to Z; and if he did so without Z's consent, intending thereby to injure, frighten or annoy Z, he has used criminal force to Z.

(*f.*) A intentionally pulls up a woman's veil. Here A intentionally uses force to her; and if he does so without her consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy her, he has used criminal force to her.

(*g.*) Z is bathing. A pours into the bath water which he knows to be boiling. Here A intentionally, by his own bodily power, causes such motion in the boiling water as brings that water into contact with Z, or with other water so situated that such contact must affect Z's sense of feeling. A has therefore intentionally used force to Z; and if he has done this without Z's consent, intending or knowing it to be likely that he may thereby cause injury, fear or annoyance to Z, A has used criminal force.

(*h.*) A incites a dog to spring upon Z without Z's consent. Here, if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z.

"Intentionally." The Indian law has not specifically made punishable the mere wanton throwing of stones, missiles from catapults, &c. Such acts are punishable in England (2 and 3 Vict., c. 47, s. 54). But in India such acts might fall under ss. 336-338, *supra*.

In Stephen's Digest there is the following illustration of assault and battery:—A cuts B's dress while B is wearing it, but without touching or intending to touch any part of B's person.—*R.* v. *Day*, 1 Cox., C. C., 207. This would not be criminal force under the Penal Code, as the act does not affect B's sense of feeling. It would be mischief (s. 425).

Assault.

351. Whoever makes any gesture or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gesture or preparation such a meaning as may make those gestures or preparations amount to an assault.

Illustrations.

(*a.*) A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

(*b.*) A begins to unloose the muzzle of a ferocious dog, intending or knowing it to be likely that he may thereby cause Z to believe that he is about to cause the dog to attack Z. A has committed an assault upon Z.

(*c.*) A takes up a stick, saying to Z, "I will give you a beating." Here, though the words used by A could in no case amount to an assault, and though the mere gesture, unaccompanied by any other circumstances, might not amount to an assault, the gesture explained by the words may amount to an assault.

"A menacing gesture, showing either in itself, or by words which accompany it, an immediate design coupled with the ability to commit a battery, is an assault."—Lou. P. C., 409.

352. Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for using criminal force otherwise than on grave provocation.

Explanation.—Grave and sudden provocation will not mitigate the punishment for an offence under this section, if the provocation is sought or voluntarily provoked by the offender as an excuse for the offence,—or

If the provocation is given by anything done in obedience to the law, or by a public servant in the lawful exercise of the powers of such public servant,—or

If the provocation is given by anything done in the lawful exercise of the right of private defence.

Whether the provocation was grave and sudden enough to mitigate the offence is a question of fact.

Paterson resolves an assault into four elements,—(1) the intention of the assailer; (2) the attempt to touch the person, or the threat to do so forthwith; (3) the non-consent of the assaulted; and (4) the want of legal excuse. *Volenti non fit injuria.* If the consent or pretended consent is obtained wholly or partially by a trick or misrepresentation, the act done will not the less be an assault, as where a schoolmaster takes liberties with a female scholar (*R.* v. *Nichol*, Russ. and R., 130); or where a doctor pretends that it is necessary to strip, or otherwise treat a female patient (*R.* v. *Rosinski*, 1 Moody, C. C., 19; *R.* v. *Case*, Den. C. C., 580). See definition of "consent," s. 90, *supra.*

A parent or guardian has the power of moderately correcting and chastising a child; so has a schoolmaster. But the correction must be moderate, the implement used of moderate power, and be used with moderate force. An excess of chastisement is in all cases unjustifiable. Though the law used to be different, a master now has no power to assault his apprentice or his servant; but the provocation of masters must have some weight. Nor can a husband assault his wife, though the common law was that he was allowed "modicum castigationem adhibere," and, for graver offences, "etiam flagellis et fustibus acriter verberare uxorem."

The New York Penal Code (306) enacts that force is not unlawful in certain instances, *e.g.*, "when committed by a carrier of passengers or his servants, or any person assisting them, at their request, in expelling from any carriage, car, &c., any passenger who refuses to obey a lawful and reasonable regulation prescribed for the conduct of passengers."

"Violence offered to the person does not amount to battery, when done in the execution of the right of moderate restraint or correction given by law to the parent over the child; the tutor or curator over his minor ward; the master over the apprentice or servant; the schoolmaster over the scholar; for the preservation of order in any meeting; for the necessary preservation of the peace or to prevent the commission of any crime; to prevent or put an end to an intrusion on a legal possession," &c.—Lou. P. C., 415.

It has been held in America that in a case of assault and battery, evidence of previous threats of violence is inadmissible.—87 N. C., 509.

Anyone who brings on or provokes a personal *rencontre* cannot rely on the plea of self-defence.—69 Ala., 229. See s. 300, Excep. 1, *supra*.

A girl, fifteen years old, living with an older brother who stands *in loco parentis* to her, and by whom she is supported, is subject to moderate restraint and correction by him.—12 Tex., App., 105. This is a curious ruling.

If a person fires a pistol through the door of a house, it is an assault upon the inmates, although the defendant intended to shoot, not them, but some one else supposed to be in the house.—10 Lea (Tenn.), 283. *Quære*—Under what section of the Penal Code could such an act be adequately punished? Section 336?

Using criminal force to deter a public servant from discharge of his duty.

353. Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done, or attempted to be done, by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

See s. 99, *supra*. It has been ruled by the Court of Cassation that the offence of assaulting or resisting public officers (s. 209 of the French Penal Code) *does not depend on the greater or less regularity*

with which those officers have proceeded. Private persons have no right to constitute themselves judges of public officers. The irregularity of the act can only be a ground for a civil action or a prosecution against its authors. Cass., 22nd August 1867; *ib.*, 15th July 1826; 26th February 1829. Similarly, it has been ruled that the offence of resisting a Police-officer cannot be excused on the plea that the latter would have wrongfully entered a house in order to get proof of the infraction of some police rule, provided he proceeded in virtue of and for the execution of the aforesaid rule.—Cass., 22nd August 1867.

The English law renders punishable with seven and not less than five years' penal servitude assaults on Magistrates and other officers when preserving a wreck or goods wrecked or cast on shore (24 and 25 Vict., c. 100, s. 37). Assaults with intent to obstruct the sale of grain, or its free passage, are punishable with three months' imprisonment.

The following is extracted from the London Metropolitan Police Orders as to assaults :—

1. In cases of affrays in the streets, assaults upon the police, attempts to rescue, or obstruction to police in the performance of their duty, it is most desirable that persons should not be taken into custody at the time *if they are known to the police*, and can be apprehended afterwards on warrant obtained from a Magistrate.

2. When persons reside at a place, or their residences are known, it can rarely be a proper step for the police to take them into custody during the excitement of an affray or disturbance, and when resistance by others, as well as by the persons themselves, may be caused by the attempt to take into custody. This does not apply to those cases in which it is necessary to take persons into custody in order to put an end to a disturbance, or prevent acts of violence being committed. In India, if persons were not arrested at the time, it would be more difficult to satisfy the Magistrate that they were there and committed the offence. In India an arrest often simplifies a case by preventing pleas of *alibi*, &c.

Assault or use of criminal force to a woman with intent to outrage her modesty.

354. Whoever assaults or uses criminal force to any woman, intending to outrage, or knowing it to be likely that he will thereby outrage, her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. [Also punishable with whipping on second conviction. Act VI of 1864.]

It is a pity the Penal Code contains no special section punishing an assault *with intent* to commit rape. Such acts are common in India, and might be held to amount to attempts in some cases, but that the rulings on attempts are extremely narrow. The wording of s. 511, P. C., covers the case of a man who throws a woman down and uses force, and only desists because of the woman's power of resistance, or because he hears people coming. The element of force goes to show the attempt. Defendant entered a woman's bedroom at night, and pulled up her clothes. She awoke, and ordered him away, *and he went.*

Held, that he could not be convicted of an assault with intent to commit rape, *the element of force being lacking*.—12 Tex., App., 194.

Assault or criminal force with intent to dishonour a person otherwise than on grave provocation.

355. Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt to commit theft of property carried by a person.

356. Whoever assaults or uses criminal force to any person, in attempting to commit theft on any property which that person is then wearing or carrying, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Assault or criminal force in attempt wrongfully to confine person.

357. Whoever assaults or uses criminal force to any person, in attempting wrongfully to confine that person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

Assaulting or using criminal force on grave provocation.

358. Whoever assaults or uses criminal force to any person, on grave and sudden provocation given by that person, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

Explanation.—The last section is subject to the same explanation as section 352.

OF KIDNAPPING, ABDUCTION, SLAVERY, AND FORCED LABOUR.

Kidnapping.

359. Kidnapping is of two kinds: kidnapping from British India, and kidnapping from lawful guardianship.

Kidnapping from British India.

360. Whoever conveys any person beyond the limits of British India, without the consent of that person or of some person legally authorized to consent on behalf of that person, is said to kidnap that person from British India.

361. Whoever takes or entices any minor under fourteen years of age if a male, or under sixteen years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.

Kidnapping from lawful guardianship.

It is only necessary that the female should be taken from lawful guardianship, whatever the purpose be. The New York Penal Code limits the purpose to three things—"marriage, concubinage, or prostitution."

Kidnapping of female children, because they have property, or for purposes of marriage, is by no means uncommon, especially among those castes who have to pay high sums for wives. The Athguria Brahmans in Orissa and the Tributary Estates are much addicted to this kidnapping. When once the marriage ceremony is over, there appears to be no remedy. Mussulmans frequently dispute about the guardianship of female orphans. In England, abduction of any woman *of any age*, from motives of lucre, with intent to marry or carnally know her, is punishable with from 5 to 14 years' penal servitude; and "whosoever shall be convicted of any offence against this section shall be incapable of taking any estate or interest in any property of such woman, or which shall come to her as heiress, coheiress, or next of kin, &c.; and if any such marriage as aforesaid shall have taken place, such property shall, upon conviction, be settled by the Court of Chancery in such manner as it shall think fit."—(24 and 25 Vict., c. 100, s. 53). In India the kidnapping is often merely due to the desire to avoid the payment of the marriage price or dower, and not to get any property. *Quære*—Would the Civil Courts in India entertain a suit by the lawful guardian of a girl kidnapped and stealthily married for recovery of such a marriage portion or consideration as might be shewn to be fitting and customary in the caste?

The substitution of one child for another by any person to whom an infant has been confided for nursing, education, or other purpose, with intent to deceive any parent or guardian, is punishable in New York with seven years' imprisonment.—P. C., 152. The Indian Penal Code does not deal specifically with such an offence. It might amount to cheating in some cases, and also to kidnapping.

On an indictment for taking an unmarried girl under sixteen from the possession of her father:—*Held*, that the statute was satisfied, though the man and the girl quitted the house together in consequence of a proposition which emanated from the girl herself to that effect, and a statement by her to the man that she intended to leave her father's house.—*Reg.* v. *Biswell*, 2 Cox, C. C., 279. It is not necessary that the taking should be intended to be permanent.—*Reg.* v. *Timmins*, 8 Cox, C. C., 401. When a servant girl under sixteen had permission from her master to go and see her parents from Sunday to Monday night, and went to see them on the Sunday for a few hours only, and then told them (by previous arrangement with the prisoner) that she was going back to her employment, instead of which she remained with him all night, and did not return to her master's employment until some days afterwards:—*Held*, that the facts would

not warrant a conviction for abduction under 24 and 25 Vic., c. 100, s. 55.—*Reg.* v. *Miller*, 13 Cox, C. C., 179. *Quære*—Is it a good defence that the accused *bonâ fide* believed and had good reason for believing that the girl was over sixteen? Held not to be so in *R.* v. *Prince*, 13 Cox, C. C., 138. But soundness of this ruling is doubtful. Under the criminal Law Amendment Act this constitutes a good defence. But a person who takes an unmarried girl under sixteen out of the possession and against the will of her father and mother is guilty, although he may not have had any bad motive in taking her away, nor means of ascertaining her age, and although she was willing to go.—*R.* v. *Booth*, 12 Cox, C. C., 321. A girl, who is away from her home, is still in the custody or possession of her father, if she intends to return to her home.—*R.* v. *Mycock*, 12 Cox, C. C., 28.

Explanation.—The words 'lawful guardian' in this section include any person lawfully entrusted with the care or custody of such minor or other person.

Exception.—This section does not extend to the act of any person who in good faith believes himself to be the father of any illegitimate child, or who in good faith believes himself to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose.

Abduction.

362. Whoever by force compels, or by any deceitful means induces, any person to go from any place is said to abduct that person.

In Louisiana "abduction" is false imprisonment of a woman with intent to force her into a marriage, either with the offender or some other. If any female, under the age of fourteen years, be taken away from her father, mother, tutor, or other person having legal charge of her person, without their consent, either for the purpose of marriage, concubinage, or prostitution, it is an abduction, although the female should consent, and although a marriage should afterwards take place between the parties."—Lou. P. C., 457, 458.

In England there are several sorts of abduction of women: (1) Abduction of unmarried woman of any age for lucre. The woman must have property; motive in forcing the woman must be lucre; and the intent must be to marry or carnally know her. The combination of these ingredients shows that the woman must be unmarried. The taking, too, must be forcible. (2) Abduction of girls of property under twenty-one. In this case the motive of lucre need not be proved against the abduction, and there need be no force, but only fraudulent allurement. (3) Abduction of woman with or without property. It is necessary to prove a forcible taking away or detention against the woman's will. (4) Abduction of girls under sixteen without property. This is equivalent to "kidnapping from lawful guardianship," so far as the definition refers to females. The section begins: "Whosoever shall *unlawfully* take, &c." It has been ruled in England that if the man finds the girl, so to speak, at large, *not knowing* that she is in any parent's custody, he is not in that case guilty.—*R.* v. *Green*, 3 F. and F., 274.

"With regard to the consent of the parent," says Paterson, "a step-father or step-mother's consent is not important, for the custody belongs to the natural parent only. Even if an illegitimate child be under the care of her natural father, his consent is that which is needed. A father's right to the custody of a legitimate child is indeed a legal right, and any infringement of it is a misdemeanour. But if the control of the parent has been lax or ambiguous, it would be difficult to convince a jury that the taking away was against his or her will. The consent of the girl is also immaterial; whether she actively consented, or was falsely deceived into a consent, or the parent was deceived by some false misrepresentation, does not protect the party from conviction." It is now a misdemeanour (48 and 49 Vict., c., 69) to take a girl under eighteen 'out of the possession of and against the will of her father or mother, or other person having the lawful care or charge of her.'

Punishment for kidnapping.

363. Whoever kidnaps any person from British India or from lawful guardianship shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting in order to murder.

364. Whoever kidnaps or abducts any person in order that such person may be murdered, or may be so disposed of as to be put in danger of being murdered, shall be punished with transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Illustrations.

(*a*.) A kidnaps Z from British India, intending or knowing it to be likely that Z may be sacrificed to an idol. A has committed the offence defined in this section.

(*b*.) A forcibly carries or entices B away from his home in order that B may be murdered. A has committed the offence defined in this section.

Kidnapping or abducting with intent secretly and wrongfully to confine a person.

365. Whoever kidnaps or abducts any person with intent to cause that person to be secretly and wrongfully confined shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Kidnapping or abducting a woman to compel her marriage, &c.

366. Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit

intercourse, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Though seduction *per se* is not indictable or actionable, yet in England a conspiracy to ruin a woman's chastity is indictable, irrespective of any contract of service. Abduction in the Penal Code includes a deceitful inducement, and some cases that have been punished in England might be brought under this section, though not others. Where Sir Francis Delaval, a libertine, bent on ruining a girl, then apprenticed to a music-master, got this music-master, for a sum of £200, to assign the indenture to himself; and the assignment purported to bind her to Sir Francis to learn music, and not to leave his apartments, whereupon he lived with her, and paraded her as his mistress, Lord Mansfield allowed a criminal information to be filed against Delaval, and the music-master, and the attorney who knowingly drew the deed, for a conspiracy to ruin the girl. In 1667, where a distant kinsman, who used to visit a house, and make love to a young heiress of sixteen, contrived, along with others, to make an appointment without the guardian's consent, in order to meet and marry her, the parties concerned were all held indictable for conspiracy, though no force was used, and the lady rather encouraged the transaction, *R.* v. *Twistleton*, 1 Lev., 257. A conspiracy to procure, by false pretences, connection with a young female is indictable. It is a misdemeanour for persons to conspire to persuade a woman to become a common prostitute, though no force of any kind is used towards her.—*R.* v. *Howell.*

By the New York Penal Code (328) every person who inveigles or entices any unmarried female of previous chaste character under the age of twenty-five years, into any house of ill-fame or of assignation, or elsewhere, for the purpose of prostitution, is punishable with one year's imprisonment and fine.

Pure seduction is not punishable either in England (if girl be above 16 years, 48 and 49 Vict., c. 69) or in India. The Criminal Law Amendment Act in England has probably gone too far in making it a misdemeanour merely to have connexion with a girl under sixteen. But seduction *under promise of marriage* (a criminal offence in other countries) should be made criminal in England and India. Sec. 342 of the Louisiana Penal Code punishes the seduction of a woman of *good reputation under promise of marriage.* Sec. 284 of the New York Penal Code enacts that 'a person who, *under promise of marriage*, seduces and has secret intercourse with an unmarried female of *previous chaste character*, is punishable with imprisonment for not more than five years or with fine not exceeding 1,000 dollars, or both.' In Germany the seduction (no promise of any sort necessary) of a chaste girl under sixteen years is punishable with one year's imprisonment. In England it is now an offence to have connexion with a girl under sixteen, even though she be a prostitute or of very loose character.

Kidnapping or abducting in order to subject a person to grievous hurt, slavery, &c.

367. Whoever kidnaps or abducts any person in order that such person may be subjected, or may be so disposed of as to be put in danger of being subjected, to grievous hurt or slavery, or to the unnatural

lust of any person, or knowing it to be likely that such person will be so subjected or disposed of, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Wrongfully concealing or keeping in confinement a kidnapped person.

368. Whoever, knowing that any person has been kidnapped or has been abducted, wrongfully conceals or keeps such person in confinement, shall be punished in the same manner as if he had kidnapped or abducted such person with the same intention or knowledge or for the same purpose as that with or for which he conceals or detains such person in confinement.

Kidnapping or abducting child under ten years, with intent to steal moveable property from the person of such child.

369. Whoever kidnaps or abducts any child under the age of ten years, with the intention of taking dishonestly any moveable property from the person of such child shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Buying or disposing of any person as a slave.

370. Whoever imports, exports, removes, buys, sells, or disposes of any person as a slave, or accepts, receives, or detains against his will any person as a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Habitual dealing in slaves.

371. Whoever habitually imports, exports, removes, buys, sells, traffics, or deals in slaves shall be punished with transportation for life, or with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

Selling of any minor for purposes of prostitution, &c.

372. Whoever sells, lets to hire, or otherwise disposes of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished

with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

In France he who habitually excites to, instigates, or facilitates debauchery or the corruption of youth of either sex under the age of 21 years, is punishable with imprisonment from six months to two years. If the offender be the father, mother, guardian, &c., the punishment is from two to five years. Fr. P. C., 334. The Court of Cassation has ruled that this section is not applicable to those who wish only to satisfy their own passions, and are not intermediate agents. Cass., 24th March 1853, *et passim*. But at the same time it has ruled that it applies to such persons if, to satisfy their own desires, they give gifts or make promises to pimps and procuresses. Cass. 10th Nov. 1860. The Belgian Code (379) inserts the words "pour satisfaire les passions d'autrui." In Germany those are punishable who facilitate debauchery *habitually or for an interested motive*. Germ. P. C., 180. The Louisiana Code also makes procuring *for gain* a criminal offence. "Whoever shall, for hire, procure the means of illicit connexion between persons of different sexes, or shall solicit or procure a woman to prostitute her person to another, shall be imprisoned not exceeding three months." Lou. P. C., 343. *Quære*—Would such a provision be salutary in India? In western countries procuresses are regarded as abominations, and, owing to the liberty enjoyed by women, there is no need for them. Montesquieu (Esp. des Lois, Bk. xvi, 8) has remarked: 'There are climates where the impulses of nature have such force, that morality has almost none. If a man be left with a woman, the temptation and the fall will be the same thing; the attack certain, the resistance none. In these countries, instead of precepts, they have recourse to bolts and bars.' Under the Criminal Law Amendment Act, it is now an offence to procure for illicit intercourse a girl under twenty-one who is not of known immoral character.

Buying of any minor for purposes of prostitution.

373. Whoever buys, hires, or otherwise obtains possession of any minor under the age of sixteen years, with intent that such minor shall be employed or used for the purpose of prostitution or for any unlawful and immoral purpose, or knowing it to be likely that such minor will be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Unlawful compulsory labour.

374. Whoever unlawfully compels any person to labour against the will of that person shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

OF RAPE.

375. A man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:—

Rape.

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death or of hurt.

Fourthly.—With her consent when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under ten years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape.

Where the trick consisted in a pretended medical or surgical operation on an ignorant woman, the Courts have justly held the offence to be rape. *R.* v. *Flattery*, 36 L. J., N. S., 32. Moreover, if instead of thus tricking a woman out of consent, some physical means is used to prevent her expressing her dissent, as by giving her a potion to stupefy her, the offence is rape.—*R.* v. *Camplin*, Den. C. C., 89.

It may be remarked that the case of *R.* v. *Flattery* overruled a long course of decisions to the contrary (*R.* v. *Barrow*; *R.* v. *Jackson*, R. & R., 487; *R.* v. *Clarke*, Dear., 397; *R.* v. *Saunders*, 8 C. and P., 265, &c.) The *ratio decidendi* was that consent had not been given at all for the carnal knowledge, but for the performance of an operation. In the case of *R.* v. *Barrow*, A had connection with B, a married woman, who permitted the act, because, owing to A's fraud, she believed him to be her husband. It was held that A had not ravished B. See recent Criminal Law Amendment Act (48 and 49 Vict., c. 69).

In Louisiana the case of the medical man, pretending that sexual connexion was necessary as an operation, would not be rape. In that State "a carnal knowledge obtained by fraud does not amount to rape, unless the fraud consist (1) in causing the woman to believe that the offender is her husband; (2) in forcibly, or without her knowledge, administering to the woman who is injured, any substance that produces an unnatural sexual desire, or such stupor as to prevent or weaken resistance, and committing the crime while she is under the operation of that which is so administered."

In a prosecution for rape there was evidence tending to show that defendant administered a drug to produce stupor; also that he seized the prosecutrix against her will. *Held*, that the jury were not con-

fined to finding defendant guilty of rape or of an assault with intent, but might find him guilty of assault and battery, or a simple assault. 57 Iowa, 691.

Does a connection accomplished during the unconsciousness of natural sleep, without arousing the female, constitute rape? This point has been decided in various ways. The Commissioners on the Penal Code of New York say:—"It has not been thought best on a review of the authorities to specify this as one of the cases embraced. The danger of giving rise to unjust prosecutions in cases where the sleep was merely simulated, is to be weighed against that of the commission of the offence where the sleep is genuine."

In England, in indictments for rape, the prosecuting counsel may give in evidence the fact that the female made a complaint soon after, but cannot give in evidence the details of the complaint. Yet the counsel for the defence may elicit the details in cross-examination (*R.* v. *Walker*, 2 M. & R., 212). In Scotland the details of a rape, as stated by the female may be given in evidence if of recent occurrence, 1 Hume, 309. Paterson remarks (Eng. and Scotch Law, p. 338) that in England it is not necessary to establish that the prosecutrix actively resisted the perpetration of the offence; it is enough that the offence was committed without her consent. In Scotland, it is necessary to prove some active resistance. *R.* v. *Sweenie*, 21st June 1858. In England it is a *presumptio juris et de jure* that a boy under 14 cannot commit a rape. In Scotland, evidence is admissible to show that the boy actually committed the offence, and, if proved, he is punishable like other persons. Loc. cit., Fulton, 2 Swint, 564.

As to complaint after rape, Paterson remarks:—"The woman's conduct, both before and immediately after the imputed offence, forms a leading feature of the evidence required to establish it. Not only is it of vital importance that the woman's veracity should be above suspicion, but some extraneous confirmation of her story is generally sought in her conduct immediately after the crime. It is thought natural, that a woman subjected to such an outrage should not only exhaust all the available means of resistance at her disposal at the time, but should take the first opportunity afterwards of recounting her wrongs to her relations or friends, while she is still smarting under her feelings of shame and revenge. Hence it is of vital consequence to show that at the first opportunity she made a complaint to a friend, neighbour, or third person, of some outrage of the kind." The absence of any complaint, in circumstances where it might reasonably have been expected, detracts considerably from her credibility. *R.* v. *Megson*, 9 C. & P., 420. With this view an attempt is generally made on the part of the accused to show, that the woman is of loose character, and by the practice of the Courts she may be asked specific questions as to whether she has committed immoralities with other men or with the prisoner on former recent occasions; yet, if she deny these imputations, such men cannot be called as witnesses to contradict her.—*R.* v. *Holmes*, L. R., 1 C. C. R., 334.

Where the crime of rape has not been completed, an indictment will lie for an assault with intent to commit it. A verdict finding an attempt to commit a rape may also be given on a charge for rape, 14 and 15 Vict., c. 100, s. 9.

In England, it has been ruled, that if a child consent, and the offence turns out to be neither rape nor an attempt to commit it, there

can be no conviction for the mere assault. *R.* v. *Read*, 1 Den. C. C., 377; *R.* v. *Cockburn*, 3 Cox, C. C., 543. Under 48 & 49 Vict., c. 69, it is now felony to have unlawful connexion with girls under sixteen.

376. Whoever commits rape shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Punishment for rape.

OF UNNATURAL OFFENCES.

377. Whoever voluntarily has carnal intercourse against the order of nature with any man, woman, or animal, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Unnatural offences.

Explanation.—Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

See *R.* v. *Jacobs*, R. and R., C. C., 331, and *R.* v. *Allen*, 3 Cox, C. C., 270.

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

378. Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft.

Theft.

Explanation 1.—A thing so long as it is attached to the earth, not being moveable property, is not the subject of theft; but it becomes capable of being the subject of theft as soon as it is severed from the earth.

Explanation 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from moving or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person, who by any means causes an animal to move, is said to move that animal, and to move everything which, in consequence of the motion so caused, is moved by that animal.

Explanation 5.—The consent mentioned in the definition may be express or implied, and may be given either by the person in possession, or by any person having for that purpose authority either express or implied.

Illustrations.

(*a.*) A cuts down a tree on Z's ground, with the intention of dishonestly taking the tree out of Z's possession, without Z's consent. Here, as soon as A has severed the tree, in order to such taking, he has committed theft.

(*b.*) A puts a bait for dogs in his pocket, and thus induces Z's dog to follow it. Here, if A's intention be dishonestly to take the dog out of Z's possession without Z's consent, A has committed theft as soon as Z's dog has begun to follow A.

(*c.*) A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft of the treasure.

(*d.*) A, being Z's servant, and entrusted by Z with the care of Z's plate, dishonestly runs away with the plate, without Z's consent. A has committed theft.

(*e.*) Z, going on a journey, entrusts his plate to A, the keeper of a warehouse, till Z shall return. A carries the plate to a goldsmith and sells it. Here the plate was not in Z's possession, it could not therefore be taken out of Z's possession, and A has not committed theft, though he may have committed criminal breach of trust.

(*f.*) A finds a ring belonging to Z on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, A commits theft.

(*g.*) A finds a ring lying on the high-road, not in the possession of any person. A, by taking it, commits no theft, though he may commit criminal misappropriation of property.

(*h.*) A sees a ring belonging to Z lying on a table in Z's house. Not venturing to misappropriate the ring immediately for fear of search and detection, A hides the ring in a place where it is highly improbable that it will ever be found by Z, with the intention of taking the ring from the hiding place and selling it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft.

(*i.*) A delivers his watch to Z, a jeweller, to be regulated. Z carries it to his shop. A, not owing to the jeweller any debt for which the jeweller might lawfully detain the watch as a security, enters the shop openly, takes his watch by force out of Z's hand, and carries it away. Here A, though he may have committed criminal trespass and assault has not committed theft, inasmuch as what he did was not done dishonestly.

(*j.*) If A owes money to Z for repairing the watch, and if Z retains the watch lawfully as a security for the debt, and A takes the watch out of Z's possession with the intention of depriving Z of the property as a security for his debt, he commits theft, inasmuch as he takes it dishonestly.

(*k.*) Again, if A having pawned his watch to Z, takes it out of Z's possession without Z's consent, not having paid what he borrowed on the watch, he commits theft, though the watch is his own property, inasmuch as he takes it dishonestly.

(*l.*) A takes an article belonging to Z out of Z's possession, without Z's consent, with the intention of keeping it until he obtains money from Z as a reward for its restoration. Here A takes dishonestly. A has therefore committed theft.

(*m.*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent, for the purpose merely of reading it, and with the intention of returning it. Here, it is probable that A may have conceived that he had Z's implied consent to use Z's book. If this was A's impression, A has not committed theft.

(*n.*) A asks charity from Z's wife. She gives A money, food, and clothes, which A knows to belong to Z, her husband. Here, it is probable that A may conceive that Z's wife is authorised to give away alms. If this was A's impression, A has not committed theft.

(*o.*) A is the paramour of Z's wife. She gives A valuable property, which A knows to belong to her husband Z, and to be such property as she has not authority from Z to give. If A takes the property dishonestly, he commits theft.

(*p.*) A, in good faith, believing property belonging to Z to be A's own property, takes that property out of B's possession. Here as A does not take dishonestly, he does not commit theft.

Sir James Stephen remarks that the short summary of the French law on theft by M. Hélie (Pratique criminelle, ii, p. 423) might serve as a summary of the English law:—"Les jurisconsultes Romains avaient fixe les caractères élémentaires de ce délit, 'fur est qui dolo malo rem alienam contrectat,' traduit fidélement cette definition. 'Quiconque a soustrait frauduleusement une chose qui ne lui appartient pas est coupable de vol.' Trois conditions sont donc nécessaires pour qu'il y ait vol; il faut qu'il y ait eu soustraction [d'une chose quelconque, que cette soustraction] soit frauduleuse, enfin que la chose soustraite appartienne à autrui." These fundamental principles of the French law of theft correspond with singular exactness to the English common law. Each is founded upon an adaptation of the Roman law, namely, the *lucri causâ*, and the *usus ejus possessionisve*. Each makes theft depend upon a wrongful taking and not upon a wrongful appropriation of the stolen article. Both the French and the English law agree in the doctrine that moveable things only can be stolen, and that rights cannot be stolen. The French lawyers, however, do not appear to have drawn from these doctrines the absurd inference that things severed from the soil, and documents which are valuable only as evidence of rights cannot be stolen.

Theft may be committed by a member of a co-partnership to the prejudice of the other co-partners—24 and 25 Vic., c. 96, s. 4. In India it would amount to criminal breach of trust (13 B. L. R., 307) or criminal misappropriation.

A married woman in England cannot commit theft upon things belonging to her husband.—1 Hale, P. C., 514.

As to recent possession of stolen goods, Stephen remarks:—"Many cases have been decided on the subject (2 Russ. Cr., 337—42), but they seem to me to come to nothing but this, that every case depends on its own circumstances, and that the nature of the thing stolen, the length of the interval between the theft and the possession, and the behaviour of the accused may all vary the force of the evidence indefinitely. The unexplained possession of a single stolen coin by a shopkeeper doing a large business in whose till it was found ten minutes after the theft would prove nothing. The finding of a lost will ten years after its loss, locked up in the strong box of a careful person deeply interested in its temporary concealment and peculiarly jealous of his strong box, would prove a great deal. Between these extremes there may be infinite degrees in the weight of such evidence. A is

seen coming out of a lower room in a warehouse in the London Docks, in the floor above which a quantity of pepper is deposited, some being loose on the floor. A's pockets are full of pepper. On being stopped, he throws down the pepper, and says: "I hope you will not be hard upon me." A may be convicted of stealing the pepper, *although no pepper was missed from the warehouse and the pepper on A was not otherwise identified than by being shewn to be similar* to that in the warehouse.—*R.* v. *Burton*, Dear, 282. In this case Maule, J., characteristically remarked: "If a man go into the London Docks sober without means of getting drunk, and comes out of one of the cellars very drunk, wherein are a million gallons of wine, I think that would be reasonable evidence that he had stolen some of the wine in that cellar, though you could not prove that any wine was stolen, or any wine was missed." Indian Magistrates are often mistaken on this point. They think that the stolen property must be absolutely identified. Suppose the case of a man coming out of a large forest with a sâl log. The burden of rebutting the inference of theft is on the man, though it might be impossible to find or ascertain the exact tree from which the log has been cut. Article 308 of Stephen's Digest is as follows: "The inference that property alleged to have been stolen has in fact been stolen may be drawn from other facts than the fact that it is identified by a witness." Under the Indian Penal Code anything of the least appreciable value (subject to the rule 'de minimis non curat lex' embodied in s. 95, *supra*), may be stolen. Under English law choses in action, wild animals kept in a state of captivity for curiosity only, and animals of a base nature (unless ordinarily confined or for any domestic purpose) are not the subject of larceny. Things of which the ownership has been abandoned are not capable of being stolen. Things of no value to any one are not capable of being stolen, but things valuable to no one but the owner are capable of being stolen. See Steph., Dig., art., 286—294.

"Out of the possession." See sec. 27, *supra*. A, a servant, gets B's letters from the post-office, and destroys one of them written to B by C, A's mistress, making inquiries of B as to A's character, delivering the rest. A steals the letter.—*R.* v. *Jones*, 1 Den., 188.

A instigates B, C's servant, to help A to steal money in C's desk. B tells his master C. C, in order to detect A, tells B to go on with the business, and so arranges matters as to give A and B opportunities to break open the desk, and take the money. This is theft in A. (English law.)—*R.* v *Egginton*, 2 East P. C., 666. Similar facts have been held not to constitute theft under the Penal Code (I. L. R., 4 Calc., 366), as the property would be taken with the knowledge of the owner, but to constitute abetment (s. 108, Expl. 2, 3, *supra*).

The French Penal Code (s. 380) allows of civil remedies only in the case of thefts (les soustractions) committed by husbands to the prejudice of their wives and *vice versâ*, by widows in respect of the property of their deceased husbands, &c., by parents and other ascendants to the prejudice of their children and *vice versâ*. But if the theft affect third persons as well, there is no such immunity.—Cass., 18th January 1849. Belg. P. C., 462.

"Theft is the fraudulently taking of corporal personal property, having some assignable value, and belonging to another, from his possession and without his assent."—Lou. P. C., 645.

When a tenant of lands lets another person have an interest in his contract, under an agreement between them to cultivate the land and

divide the crop equally, after paying the rent, and the latter ceases to work, and abandons the crop before maturity, giving as a reason that he did not think they could make anything, he is guilty of a breach of contract, and forfeits all interest in the crop, the entire property therein, when matured, vesting in the original tenant; and whatever may be his rights or remedy against the latter, he may be convicted of the subsequent larceny of a part of the growing or outstanding crop. 65 Ala., 456. Such cases as this sometimes occur in India.

Where, on indictment for larceny, a witness (to show want of motive) testified that he had kept defendant supplied with money at the time when the larceny was alleged to have occurred—*Held*, competent for him to be asked, on cross-examination, whether defendant was not at that time in need of money and owing pressing debts.—97 Pa. St., 503.

On the trial of H for theft of a horse, the State, having adduced evidence strongly tending to connect H with the theft, may properly prove that he belonged to a band of thieves confederated together for the purpose of stealing horses generally.—11 Tex., App., 238. Would such evidence be received in India in the case of Mugheya Domes and other criminal classes?

An instruction that recent possession of stolen goods will warrant conviction, "unless attending circumstances or other evidence so far overcomes the presumption thus raised as to create a reasonable doubt," is proper.—102 Ill. 241. *Held* in Missouri, that the presumption of guilt arising from such possession, if not rebutted, will be held conclusive (Hough and Henry, J. J., dissenting) 73 Mo., 608. In Texas, in a case of cattle-theft, where the hides only were found in possession of the accused, *held*, not to justify a conviction.—11 Tex. App., 503. Defendant openly, in the day-time, drove to A's farm, and, in the presence of A's wife and others, carried off a trough claimed by him as his own, and which he had previously demanded of A. *Held*, not larceny.—12 Tex., App., 391. It is larceny for the owner of property to remove it clandestinely from the rightful possession of one who has a valid lien on it.—50 Mich., 249.

Water supplied by a water-company to a consumer, and standing in his pipes, may be the subject of a larceny at common law.—*Ferens* v. *O'Brien*, 11 Q. B. D., 21.

There is a certain day in the year in parts of Bengal, in which it is customary and supposed to be no offence to steal. The custom is becoming obsolete and should not be recognized for the same reasons that the competency of the poor in England to glean was finally disallowed. It was not till 1776 that the point was seriously mooted, when a farmer charged gleaners before a Justice with felony, saying they had stolen his barley in the straw by handfuls, and the Justice imprisoned them. Lord Mansfield, C.J., ruled that the Justice had acted rightly, and that stealing under the colour of leasing or gleaning was not to be justified. In 1788 the point was raised in the form of demurrer to a plea in action of trespass, the defence being, that the defendant was a poor person and inhabitant of the parish, and that he entered the plaintiff's field to glean. A majority of three judges to one repudiated the law of Moses, treating the Mosaic precept as addressed only to the conscience, and decided that such a right as that of gleaning was too uncertain to be acted on; was inconsistent with the nature of property, which implies an exclusive enjoyment, and that the arguments *ab inconvenienti* showed it to be impracticable

to enforce such a law. There might, of course, be cases to which s.95, P. C., would be applicable.

How far stealing from hunger is punishable is a point that does and must from time to time arise in a country like India, where there is often scarcity, and there is no poor-law. Lycurgus allowed hungry men to steal. The civilians got over the difficulty easily by defining larceny to be the taking of goods for the sake of gain; and hence if a starving man stole meat to satisfy hunger, he was not within the definition. It is said in the *Mirror*, that it was owing to petty thefts being often caused by hunger, that Edward I ordered those convicted of larceny under the value of a shilling to be exempt from capital punishment, as in the ordinary case (Mirror, c. 4, s. 16). Hawkins said that extreme necessity was an excuse for felony, provided the necessity that induced the invasion of another's property did not arise from prodigality or idleness, or neglecting one's own business. Lord Bacon asserted without any qualification, that if one stole viands to satisfy his present hunger, this was not felony or larceny. But it should be remembered that in Bacon's time a poor-law was not thoroughly established. Lord Hale denied that such was the law of England, at least since the statutory provision for the poor, because of the manifest insecurity of property, if a man might allege a necessity, of which *none but he himself could judge*. But the reality of the necessity is a question of fact, as easily proved as other facts. Though the view taken by Hale, remarks Paterson, is the only satisfactory principle to act upon, yet judges naturally are careful as to the punishment in such cases, and use as much moderation as is compatible with enforcing the general rule. It is related that Rooke, J., commended a jury for finding a hungry little girl guilty of larceny for stealing a small mouthful of food, and he sentenced her to pay a fine of one shilling; but took care to add that, if she had not got that coin, he would give her one for the purpose.—*Foss's Judges*. This particular case might in India have been brought under s. 95 of the Penal Code. In India, whether the accused could or could not get work, must be carefully sifted. When there is a severe scarcity, the witnesses for the prosecution often say that no work was available in the village or adjacent villages.

In districts, where there is forest, it is often difficult to prove petty thefts of wood. In England, where customary rights and easements are not so varied or so comprehensive as in India, there is a somewhat stringent section for the protection of proprietary rights. "If the whole or any part of any tree, sapling, &c., or any part of any live or dead fence, &c., *being of the value of one shilling at the least*, shall be found in the possession of any person, or on the premises of any person with his knowledge, and such person *shall not satisfy* a Justice of the Peace that he came lawfully by the same, he shall, on conviction by the Justice, forfeit and pay, over and above the value of the articles so found, any sum not exceeding £2." (24 and 25 Vict., c. 96., s. 35). In India it is very doubtful how far owners of land can enclose forest or waste land. The villagers almost always have some customary rights therein. The tendency of civil courts to decide on principles of English law has been considerably checked and corrected by the Privy Council, who have recognized that the agricultural community have always enjoyed very extensive profits *à prendre in alieno solo*. For instance, in India an easement may be acquired to fish in another man's water without

payment of rent; and to irrigate from another man's tank is one of the commonest of customary rights.

Punishment for theft.

379. Whoever commits theft shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Theft in dwelling-house, &c.

380. Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling, or for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Theft by clerk or servant of property in possession of master.

381. Whoever, being a clerk or servant, or being employed in the capacity of a clerk or servant, commits theft in respect of any property in the possession of his master or employer, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Theft after preparation made for causing death or hurt, in order to the committing of the theft.

382. Whoever commits theft, having made preparation for causing death or hurt or restraint, or fear of death or of hurt or of restraint, to any person, in order to the committing of such theft, or in order to the effecting of his escape after the committing of such theft, or in order to the retaining of property taken by such theft, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Illustrations.

(*a*) A commits theft on property in Z's possession; and while committing this theft he has a loaded pistol under his garment, having provided this pistol for the purpose of hurting Z, in case Z should resist. A has committed the offence defined in this section.

(*b*.) A picks Z's pocket, having posted several of his companions near him, in order that they may restrain Z, if Z should perceive what is passing and should resist, or should attempt to apprehend A. A has committed the offence defined in this section.

OF EXTORTION.

Extortion.

383. Whoever intentionally puts any person in fear of any injury to that person or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security, commits 'extortion.'

Illustrations.

(*a.*) A threatens to publish a defamatory libel concerning Z, unless Z gives him money. He thus induces Z to give him money. A has committed extortion.

(*b.*) A threatens Z that he will keep Z's child in wrongful confinement, unless Z will sign and deliver to A a promissory note binding Z to pay certain monies to A. Z signs and delivers the note. A has committed extortion.

(*c.*) A threatens to send club-men to plough up Z's field, unless Z will sign and deliver to B a bond binding Z under a penalty to deliver certain produce to B, and thereby induces Z to sign and deliver the bond. A has committed extortion.

(*d.*) A, by putting Z in fear of grievous hurt, dishonestly induces Z to sign or affix his seal to a blank paper, and deliver it to A. Z signs and delivers the paper to A. Here, as the paper so signed may be converted into a valuable security, A has committed extortion.

If the threat be to publish a libel it is immaterial whether it is really libellous (*R.* v. *Redman*, 10 Cox, C.C., 159). "Injury" is harm illegally caused (s. 44, *supra*). The definition in the New York Penal Code (613) is wider: "Extortion is the obtaining of property from another, with his consent, induced by a wrongful use of force or fear, or under colour of official right."

Punishment for extortion.

384. Whoever commits extortion shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Putting person in fear of injury in order to commit extortion.

385. Whoever, in order to the committing of extortion, puts any person in fear, or attempts to put any person in fear, of any injury, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Extortion by putting a person in fear of death or grievous hurt.

386. Whoever commits extortion by putting any person in fear of death or of grievous hurt to that person, or to any other, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

387. Whoever, in order to the committing of extortion puts or attempts to put any person in fear of death or of grievous hurt to that person, or to any other, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Putting person in fear of death or of grievous hurt in order to commit extortion.

388. Whoever commits extortion by putting any person in fear of an accusation against that person or any other of having committed, or attempted to commit, any offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, or of having attempted to induce any other person to commit such offence, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be one punishable under section 377, may be punished with transportation for life. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Extortion by threat of accusation of an offence punishable with death or transportation, &c.

The extortion may be committed verbally or by writing. It is altogether immaterial whether the party accused really committed the alleged crime, if the intention was to extort money (*R.* v. *Richards*, 11 Cox, C.C., 43).

389. Whoever, in order to the committing of extortion, puts or attempts to put any person in fear of an accusation against that person or any other of having committed, or attempted to commit, an offence punishable with death, or with transportation for life, or with imprisonment for a term which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if the offence be punishable under section 377, may be punished with transportation for life. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Putting person in fear of accusation of offence in order to commit extortion.

OF ROBBERY AND DACOITY.

390. In all robbery there is either theft or extortion.

Robbery.

When theft is robbery.

Theft is 'robbery,' if, in order to the committing of the theft, or in committing the theft, or in carrying away, or attempting to carry away, property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt or of instant wrongful restraint.

When extortion is robbery.

Extortion is 'robbery,' if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted.

Explanation.—The offender is said to be present if he is sufficiently near to put the other person in fear of instant death, of instant hurt, or of instant wrongful restraint.

Illustrations.

(*a.*) A holds Z down, and fraudulently takes Z's money and jewels from Z's clothes, without Z's consent. Here A has committed theft, and, in order to the committing of that theft, has voluntarily caused wrongful restraint to Z. A has therefore committed robbery.

(*b.*) A meets Z on the high road, shows a pistol, and demands Z's purse. Z, in consequence, surrenders his purse. Here A has extorted the purse from Z by putting him in fear of instant hurt, and being at the time of committing the extortion in his presence. A has therefore committed robbery.

(*c.*) A meets Z and Z's child on the high road. A takes the child, and threatens to fling it down a precipice, unless Z delivers his purse. Z, in consequence, delivers his purse. Here A has extorted the purse from Z, by causing Z to be in fear of instant hurt to the child, who is there present. A has therefore committed robbery on Z.

(*d.*) A obtains property from Z by saying—"Your child is in the hands of my gang, and will be put to death unless you send us ten thousand rupees. This is extortion, and punishable as such; but it is not robbery, unless Z is put in fear of the instant death of his child.

"Or in attempting to carry away property, &c." In New York, if force is employed merely as a means of escape, it is not robbery. N. Y. P. C., 281.

A snatches a bundle from B's hand, and runs away with it. This is theft, and not robbery, as the violence used was only to get possession of the bundle, 2 Russ. Cr., 109.

A, at a mock auction, knocks down goods to B, who has not bid for them, pretending that she has. On B's wanting to go, A says she shall not be allowed to go unless she pays for the goods knocked down to her, which she does. This in England was held to be theft at least, and perhaps robbery. *R.* v. *Megrath*, L. R., 1 C.C.R., 205. It is both robbery and extortion under the Penal Code.

391. When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding is said to commit 'dacoity.'

Dacoity.

The offence of piracy is not separately treated of in the Penal Code.

392. Whoever commits robbery shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine; and if the robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years. [Also punishable with whipping on second conviction. Act VI of 1864.]

Punishment for robbery.

393. Whoever attempts to commit robbery shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Attempt to commit robbery.

394. If any person, in committing or in attempting to commit robbery, voluntarily causes hurt, such person, and any other person jointly concerned in committing or attempting to commit such robbery, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Voluntarily causing hurt in committing robbery.

395. Whoever commits dacoity shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Punishment for dacoity.

396. If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity,

Dacoity with murder.

every one of those persons shall be punished with death, or transportation for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Robbery or dacoity, with attempt to cause death or grievous hurt.

397. If at the time of committing robbery or dacoity, the offender uses any deadly weapon, or causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, the imprisonment with which such offender shall be punished shall not be less than seven years.

Attempt to commit robbery or dacoity when armed with deadly weapon.

398. If, at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

Making preparation to commit dacoity.

399. Whoever makes any preparation for committing dacoity shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

"Preparation for committing dacoity." A preparation to commit any less heinous offence is not punishable, unless the facts constitute abetment or an unlawful assembly. The French (399) and Belgian (488) Penal Codes punish with from three months to two years' imprisonment any one who fraudulently counterfeits or alters keys. The punishment is increased to five years, if the guilty person is a locksmith by profession.

Punishment for belonging to a gang of dacoits.

400. Whoever at any time after the passing of this Act, shall belong to a gang of persons associated for the purpose of habitually committing dacoity, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

Punishment for belonging to a wandering gang of thieves.

401. Whoever, at any time after the passing of this Act, shall belong to any wandering or other gang of persons associated for the purpose of habitually committing theft or robbery, and not being a gang of thugs or dacoits, shall be punished with rigorous imprisonment for a term

which may extend to seven years, and shall also be liable to fine.

Assembling for purpose of committing dacoity.

402. Whoever, at any time after the passing of this Act, shall be one of five or more persons assembled for the purpose of committing dacoity shall be punished with rigorous imprisonment for a term which may extend to seven years, and shall also be liable to fine.

If the common object of the assembly be to commit any other offence, it may be an unlawful assembly under s. 141, *supra*.

OF CRIMINAL MISAPPROPRIATION OF PROPERTY.

Dishonest misappropriation of property.

403. Whoever dishonestly misappropriates or converts to his own use any moveable property shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Illustrations.

(*a.*) A takes property belonging to Z out of Z's possession, in good faith, believing at the time when he takes it, that the property belongs to himself. A is not guilty of theft; but if A, after discovering his mistake, dishonestly appropriates the property to his own use, he is guilty of an offence under this section.

(*b.*) A, being on friendly terms with Z, goes into Z's library in Z's absence, and takes away a book without Z's express consent. Here, if A was under the impression that he had Z's implied consent to take the book for the purpose of reading it, A has not committed theft. But if A afterwards sells the book for his own benefit, he is guilty of an offence under this section.

(*c.*) A and B being joint owners of a horse, A takes the horse out of B's possession, intending to use it. Here, as A has a right to use the horse, he does not dishonestly misappropriate it. But if A sells the horse and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—A dishonest misappropriation for a time only is a misappropriation within the meaning of this section.

Illustration.

A finds a Government promissory note belonging to Z, bearing a blank endorsement. A, knowing that the note belongs to Z, pledges it with a banker as a security for a loan, intending at a future time to restore it to Z. A has committed an offence under this section.

Explanation 2.—A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence; but he is guilty of the offence above defined if he appropriates it to his own use,

when he knows or has the means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means, or what is a reasonable time in such case, is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if at the time of appropriating it he does not believe it to be his own property, or in good faith believes that the real owner cannot be found.

Illustrations.

(*a.*) A finds a rupee on the high road, not knowing to whom the rupee belongs. A picks up the rupee. Here A has not committed the offence defined in this section.

(*b.*) A finds a letter on the road containing a bank note. From the direction and contents of the letter he learns to whom the note belongs. He appropriates the note. He is guilty of an offence under this section.

(*c.*) A finds a cheque payable to bearer. He can form no conjecture as to the person who has lost the cheque. But the name of the person who has drawn the cheque appears. A knows that this person can direct him to the person in whose favour the cheque was drawn. A appropriates the cheque without attempting to discover the owner. He is guilty of an offence under this section.

(*d.*) A sees Z drop his purse with money in it. A picks up the purse with the intention of restoring it to Z, but afterwards appropriates it to his own use. A has committed an offence under this section.

(*e.*) A finds a purse with money, not knowing to whom it belongs; he afterwards discovers that it belongs to Z, and appropriates it to his own use. A is guilty of an offence under this section.

(*f.*) A finds a valuable ring, not knowing to whom it belongs. A sells it immediately without attempting to discover the owner. A is guilty of an offence under this section.

Every person who has obtained by any means the possession of any moveable thing is deemed to be the special owner thereof, as against any person who cannot show a better title thereto.—Steph. Dig., Art. 283. A finds a bezoar-stone in the street and shows it to B, a jeweller, to ascertain its value. B keeps it. A has a right to the stone as against B.—*Armory* v. *Delamirie*, 1 S. L. C., 357.

A steals B's watch. C picks A's pocket of the watch. C steals from A.—1 Hale, P. C. 507.

Is the act of opening and reading, or suppressing altogether, a letter addressed to another punishable under the Penal Code? The former act is probably not punishable, though the latter may amount to theft or criminal misappropriation. Such acts are not punishable under the French Penal Code.—Cass., 9th January 1863. But s. 460 of the Belgian Penal Code punishes the suppression of a letter confided to the post, or the opening of it in order to disclose what is written in it (pour en violer le secret). Sec. 299 of the German Penal Code enacts that whoever voluntarily and without authorization opens a closed letter or any other closed document, which was not personally meant

for him, is punishable with a fine of 300 marks, or imprisonment for three months. There can only be a prosecution on complaint.

The distinction between criminal misappropriation and theft is sometimes very fine. The Louisiana Penal Code designates the former offence as fraudulent appropriation of property found. Art. 618 of that Code is as follows:—"If the property be found in a place where property of the same description is usually placed, or suffered to be; or if in an unusual place, in one where the finder knows it to have been designedly put by the owner; or if the property be domestic animals, and they are found in a place in which they are usually kept, or to which they are suffered to go, or may reasonably be supposed to have strayed, this is not finding within the meaning of the preceding articles; and if the person taking the property fraudulently appropriate it, he is guilty of theft."

"What are reasonable means is a question of fact." Section 151 of the Chinese Penal Code enacts that "whoever finds any lost and forgotten goods shall within five days deliver up the same to the Magistrate of the district. If public property, it is retained by Government; if not, half is given to the owner, and half allowed as a reward to the finder. If no person proves a claim within thirty days, the finder receives the whole. A finder of lost and forgotten goods, who does not deliver up the same to a Magistrate within five days, is liable to punishment."

The Indian Code does not draw any line as to the value of an article found and appropriated. Art. 539 of the Louisiana Code enacts that if any one finds personal property greater in value than twenty dollars, of which he has no reason to believe any designated person to be the owner, he shall be deemed to have concealed the same and to have appropriated it to his own use, unless within three days he gives to the parish Judge a written notice, &c. . . . If the owner appear within six months, and prove his property to the satisfaction of the Judge, it shall be restored to him on his paying all the costs of preserving the same and other expenses, and also ten per cent. on the value of the property to the finder. These rules apply to property found stranded or drifting in any lake or stream of water, except that the owner shall be bound to pay a reasonable salvage over and above the ten per cent. on the value. If no owner appears within the six months, the property is delivered to the finder.—Lou. P. C., 539—547. Some rules are required in India. In some districts all property, however small the value, found by any one is ruthlessly seized by the police and sold as unclaimed property. Whether anything is given to the individual finder depends on the knowledge of law and jurisprudence possessed by the Magistrate before whom the matter comes. But it may be affirmed that, as a general rule, the finder gets nothing.

Dishonest misappropriation of property possessed by a deceased person at the time of his death.

404. Whoever dishonestly misappropriates or converts to his own use property knowing that such property was in the possession of a deceased person at the time of that person's decease, and has not since been in the possession of any person legally entitled to such possession, shall be punished with imprisonment of either description for a term which

may extend to three years, and shall also be liable to fine; and if the offender at the time of such person's decease was employed by him as a clerk or servant, the imprisonment may extend to seven years.

Illustration.

Z dies in possession of furniture and money. His servant A before the money comes into the possession of any person entitled to such possession dishonestly misappropriates it. A has committed the offence defined in this section.

It is not necessary that the accused should misappropriate to his own use.—12 W. R., Cr., 39; 11 W. R., Cr., 1.

OF CRIMINAL BREACH OF TRUST.

Criminal breach of trust.

405. Whoever, being in any manner entrusted with property, or with any dominion over property dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust or wilfully suffers any other person so to do, commits "criminal breach of trust."

Illustrations.

(*a.*) A being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(*b.*) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse-room. A dishonestly sells the goods. A has committed criminal breach of trust.

(*c.*) A, residing in Calcutta, is agent for Z residing at Delhi. There is an express or implied contract between A and Z that all sums remitted by Z to A shall be invested by A according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions, and employs the money in his own business. A has committed criminal breach of trust.

(*d.*) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions and buys shares in the Bank of Bengal for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(*e.*) A, a revenue officer, is entrusted with public money, and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(*f.*) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

A trustee may be prosecuted for gambling away sums received by him. *Held*, in France, that a plea that there can be no prosecution except in the event of non-restitution on the expiry of the trust is quite untenable.—Cass., 3rd Feb., 1870.

The German Penal Code treats of theft, criminal misappropriation, and criminal breach of trust, and cheating, in three short articles. The first two are as follows :—

242. Whoever takes away from another any moveable thing which does not belong to the taker with intent to appropriate it illegally to himself, is liable to be imprisoned for theft.

246. Whoever illegally appropriates to himself any moveable thing which does not belong to him, but which is in his possession or is entrusted to him, is punishable for embezzlement with imprisonment up to three years, or, if the thing was entrusted to him, up to five years.

Punishment for criminal breach of trust.

406. Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Criminal breach of trust by carrier, &c.

407. Whoever, being entrusted with property as a carrier, wharfinger, or warehouse-keeper, commits criminal breach of trust in respect of such property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by a clerk or servant.

408. Whoever, being a clerk or servant, or employed as a clerk or servant, and being in any manner entrusted in such capacity with property, or with any dominion over property, commits criminal breach of trust in respect of that property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Criminal breach of trust by public servant, or by banker, merchant or agent.

409. Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

OF THE RECEIVING OF STOLEN PROPERTY.

Stolen property.

410. Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which the criminal breach of trust has been committed, is designated as 'stolen property' whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without British India. But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.

Dishonestly receiving stolen property.

411. Whoever dishonestly receives or retains any stolen property, knowing or having reason to believe the same to be stolen property, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

A person is said to receive goods improperly obtained as soon as he obtains control over them from the person from whom he receives them. Where goods are received by a wife or servant, in the husband's or master's absence, with a guilty knowledge on the part of such wife or husband, the husband or master does not become a receiver only by acquiring a guilty knowledge of the receipt of the goods by such wife or servant, and passively acquiescing therein, but he does become a receiver with a guilty knowledge, if, having such knowledge, he does any act approving of the receipt of the goods.—Steph. Dig., 353.

A's wife, in A's absence, receives stolen potatoes knowing them to be stolen. The jury find that A "afterwards adopted his wife's receipt." This finding is not sufficient to sustain a verdict of guilty, as it is consistent with A's having passively consented to what his wife had done without taking any active part in the matter.—*R.* v. *Dring*, D. & B., 329; 7 Cox, C. C., 380. A's wife, in A's absence, receives stolen goods and pays the thief six pence on account. The thief then tells A, who strikes a bargain with the thief, and pays him the balance. A has received stolen goods, knowing them to be stolen.—*R.* v. *Woodward*, L. & C., 122. A husband can receive from a wife who steals on her own account in his absence.—*R.* v. *Wathey*, L. & C., 230.

It is not necessary to prove an actual manual possession of stolen goods: it is sufficient if the goods are shewn to have been under the control of the person charged with receiving.—*R.* v. *Smith*, 6 Cox, C. C. 554.

Dishonestly receiving property stolen in the commission of a dacoity.

412. Whoever dishonestly receives or retains any stolen property, the possession whereof he knows or has reason to believe to have been transferred by the commission of dacoity, or dishonestly receives

from a person whom he knows or has reason to believe to belong, or to have belonged, to a gang of dacoits, property which he knows or has reason to believe to have been stolen, shall be punished with transportation for life, or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping, see Act VI of 1864, ss. 2 & 3.]

Habitually dealing in stolen property.

413. Whoever habitually receives or deals in property which he knows or has reason to believe to be stolen property shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Convictions under s. 411 are evidence to prove an offence under this section.—I. L. R., 8 Calc., 634.

Assisting in concealment of stolen property.

414. Whoever voluntarily assists in concealing or disposing of or making away with property which he knows or has reason to believe to be stolen property shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

See I. L. R., 6 Bom., 402.

OF CHEATING.

Cheating.

415. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat.'

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations.

(*a.*) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(*b.*) A. by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(*c.*) A. by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(*d.*) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(*e.*) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(*f.*) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(*g.*) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(*h.*) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(*i.*) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z without disclosing the fact of the previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.

"False pretence" in English law means a false representation made either by words, by writing, or by conduct, that some facts exist or existed, and such a representation may amount to a false pretence, although a person of common prudence might easily have detected its falsehood by inquiry, and although the existence of the alleged fact was in itself impossible.

But the expression "false pretence" does not include—

(*a*) a promise as to future conduct not intended to be kept, unless such promise is based upon or implies an existing fact falsely alleged to exist; or

(*b*) such untrue commendation or untrue depreciation of an article which is to be sold as is usual between sellers and buyers, unless such untrue commendation or depreciation is made by means of a definite false assertion as to some matter of fact capable of being positively determined.—Steph. Dig., Art. 330.

A obtains money from B by promising to marry her, and to furnish a house with the money, representing himself to be an unmarried man. A, in fact, is married. The representation that A was unmarried is a false pretence, though the promises based upon it would not have been false pretences without it.—*It.* v. *Jennison*, L. & C., 157. As regards obtaining goods, &c., by false pretences, an intent to defraud is consistent with an intent to undo the effect of the fraud if the offender should be able to do so.—Steph. Dig., 332. A by false pretences induces B to let him have some carpets, intending to pay for them if he should

be able to do so. This is an intent to defraud.—*R.* v. *Naylor*, L. R., 1 C. C. R., 4.

An influential and intentionally false representation by the seller to the purchaser on the sale of a horse, that the horse is sound, kind, and true, the falsity not being apparent, is indictable as false pretences. The fact that the vendor gave a written warranty does not relieve him from the penal effect of his act.—87 N. Y., 561.

The fact that the false representation would not have deceived a shrewd man is no defence. 56 Iowa, 195; nor need it be such as to deceive a person of ordinary prudence and caution.—36 Ark., 242. Defendant's contention that the false pretence would not have been credited by one exercising ordinary caution, held to be without weight, as complainant was an ignorant and superstitious negro, *and was in fact imposed upon.*—9 Baxter (Tenn.) 45.

In America, it has been held that the false pretence must be the assertion of an existing fact, not a promise to perform some act in the future.—99 Pa. St., 570; 90 N. Y., 314.

Where a manufacturer of sewing machines was induced to deliver a machine to defendant, relying on his representation, which was false, that he resided in a particular locality, *held*, that this was an indictable false pretence, though the manufacturer might have ascertained the truth by inquiry.—69 Ala., 242.

The prisoner was charged with obtaining a prize in a certain swimming race by false pretences. He obtained his competitor's ticket for the race by representing himself to be a member of a certain club, and by a letter purporting to be written by the Secretary of that Club. On the faith of these representations, which turned out to be false, he was allowed twenty seconds' start in the race, and won the prize:—*Held*, by the Common Sergeant, after consulting Stephen, J., that the false pretences were too remote, and that the count charging them could not be sustained.—*Reg.* v. *Larner*, 14 Cox, C. C., 497.

A man who sells or mortgages land, concealing the fact of a prior sale or mortgage, is guilty of cheating. In China, the amount obtained upon such false pretences is ascertained, and the offender punished as in the case of an ordinary theft to the same extent.—China P. C., 95.

Comprehensive as the Penal Code is, yet it does not afford relief in many cases in which an eastern people might expect relief. Among the lower castes the father of a marriageable girl sometimes agrees to give her to a certain man, takes money or presents from him, and then refuses to carry out the marriage-contract. Is the luckless *Dome* or *Bagdi* to file a suit in the Court of the District Judge? He sometimes puts in a petition under s. 415 of the Penal Code, and if he can prove that, *at the time* of taking the presents, the father of the girl *did not intend* to carry out his promise, then the accused is, of course, liable to punishment. But it is very difficult to prove this. In such cases, if the Magistrate finds that money or presents were really given, he should have power to order immediate restitution. The Penal Code of China has very elaborate provisions on this point. The person who has authority to give the intended bride away is punished with fifty blows, and the marriage shall be completed agreeably to the original contract. Although the marriage articles should not have been drawn up in writing, the acceptance of the marriage-presents shall be sufficient evidence of the agreement between the parties. If the girl has been affianced to a second bride-

groom, the latter shall get back his presents, if he was unaware of the previous contract; but if aware of it, he shall participate equally in the punishment. But if either of the contracted parties, previous to the completion of the marriage, are guilty of theft or adultery, the law for punishing a breach of the contract shall not be enforced.—China P. C., 101.

A paints a picture, and intending to represent that it was painted by an eminent artist, writes that artist's name in the corner. This may be a cheat, but is not forgery.—*R.* v. *Cross*, D. & B., 460. If the name in the corner can be said to make the picture a document, the act would also come under s. 476, *infra*. A prints a number of wrappers, imitating advertisements in which egg-powders were wrapped for sale by B, their maker. He encloses spurious egg-powders in the wrappers, and sells them. This is not forgery, though it is obtaining money by false pretences.—*R.* v. *Smith*, D. & B., 566. This act would also be punishable under ss. 482 and 486, *infra*. As to this case, Stephen remarks: "It would seem as if in this case the element wanting to complete the offence was the intent to defraud by means of the document, rather than the absence of a document capable of being forged; the offence lay in selling spurious as real powders. The wrappers without the powders could have no effect whatever. The essence of forgery is, that the document itself should be made the instrument of fraud."

"No mere declaration of the value, or cost, or quality, or quantity of the property sold, although such declaration should be false: no promise of a consideration for the delivery of personal property, although such promise be not performed: no mere declaration that the party is able to pay, or perform or deliver the consideration: is a false pretence. . . . It is an offence, after a sale of personal property and before delivery, to substitute other property of less value than that sold, with intent to defraud the purchaser of the price paid, or to be received. It is a false pretence to *promise immediate payment* for personal property, and, after obtaining possession thereof, *to refuse either to restore the property or pay the price*. . . . It is obtaining property under a false pretence to procure it by any game, either of skill or chance, or of both, by any other means than those which are given by the regular chances of the game, if it be one of chance; or by the fair exercise of skill and knowledge of the game, if it be not a game of hazard."—Lou. P. C., 626, 634, 635, 641.

The Belgian Penal Code (498) especially mentions the case of cheating a purchaser with reference to the identity of the thing sold, that is, by fraudulently delivering an article other than the one which was actually the subject of the bargain or transaction. The following case occurred in Kingston. A ladies' maid sees a cape in a shop window marked twenty-five shillings, and goes in and buys it then and there, and orders it to be sent to her. In the meanwhile the cape is seen by another lady, who takes a fancy to it, and purchases it. Another cape is sent to the ladies' maid as the one she purchased. She refuses to receive it. Has the seller committed any offence? Under the Belgian law he has, but apparently not under the French Penal Code. Would the facts constitute an attempt to cheat in India? Clearly they would, if the cape sent to the ladies' maid is of *less value* than the one purchased by her. But suppose it to be of *equal value*, though the ladies' maid does not like it so well.

Suppose that the shop-owner has resold the original cape to the lady, as she was a good customer and wanted very much to have it, and he was desirous of obliging her. If he takes a higher price from the lady than he did from the ladies' maid, it would probably be an attempt to cheat, as an intent to defraud the ladies' maid would be presumed. But suppose he takes the same price, and sends another cape of the same kind to the ladies' maid, intending her to think it was the one she purchased. The deception is not fraudulent, but it appears to be dishonest, as the ladies' maid loses an article, to which she is legally entitled, and the means through which she loses it are certainly unlawful; they are even illegal (a narrower word), as they furnish ground for a civil action. The facts thus appear to constitute an attempt to cheat. But it appears to me that there can be no attempt to cheat, if the facts, when complete and successful,. would not constitute cheating. The cape sent is of equal value, though a different one, and suppose the ladies' maid is deceived and takes it. In such a case the act cannot be said to cause, or to be likely to cause, her damage or harm in any respect, and hence there could be no cheating; and if no cheating, there could be no attempt to cheat. The third paragraph of s. 498 of the Belgian Penal Code relates to the deception of a purchaser with reference to the *nature* or *origin* of the thing sold, by delivering a thing like in appearance to that which the purchaser has purchased or thinks he has purchased. It is significant that the word "frauduleusement" (not defined in the Code) does not occur in this paragraph after the words "en livrant," though it does in the second paragraph relating to the *identity* of the thing sold.

Ruled by the Court of Cassation in France that deceit in the sale of goods is only punishable if it refers to the *nature* or *quantity* of the goods. Deceit as regards *quality* is restricted to the case of false stones sold as good stones.—Cass., 3rd December 1853. Mixture of some other substance with goods does not constitute deceit as to the *nature* thereof, unless the original nature (sa nature première) of the thing has disappeared, or unless it has become unfit for the use for which it was intended.—Cass., 27th August 1858; 8th April 1864. But there are other rulings to the effect that every fraudulent mixture is punishable, if it deteriorates the substance to the prejudice of the buyer, even though such deterioration affects the quality of the thing rather than its nature.—Cass., 27th April and 8th June 1854. To sell as pure red wine, wine which is composed one-half of red and one-half of white wine is punishable.—Cass., 27th February 1857. It is also punishable to mix other liquids with liquors, as, for instance, water, *whatever be the importance of the alteration or its results.*—Cass., 12th July 1855. Under this ruling, if milk be sold *as pure milk*, the admixture of *any* quantity of water constitutes the offence. It has also been ruled by the Court of Cassation that for a baker to expose for sale loaves of a less weight than that which their shape indicates, according to the usage of the locality, constitutes an attempt to cheat (tentative de tromperie).—Cass., 30th June 1854; 12th December 1856.

The latter part of s. 415 is probably too widely and loosely worded. It might be made to include the comparatively harmless case of a man, who takes lodgings in an assumed name for himself and his kept mistress. The landlady might not take them in, if she knew they were not a married couple, and such an act might cause her harm in reputation or property. The same difficulty appears to

have been felt in France, where the Penal Code contains stringent provisions as to assuming false names in passports, permits, &c., and hotel and lodging-housekeepers have to keep registers showing the names of persons who lodge with them. It has been ruled by the Court of Cassation that, if a man is proved to have taken a passport in a false name, he may, nevertheless, be acquitted if the Judge be satisfied that there was an absence of fraudulent intention.—Cass., 11th November 1859. See ss. 153, 154 of the French Penal Code, and ss. 198, 199, 210 of Belgian Penal Code.

Where the prisoner deceived the complainant by stating that a certain woman was a Brahman, whereas she was of a lower caste, and thereby induced the complainant to part with money and contract marriage with her, *held*, that prisoner was guilty of cheating.—5 W. R., Cr., 98.

There must be actual deception. Where a person bought milk, knowing it was watered, in order to prosecute the seller, it was held that there had been no deception, and, therefore, no cheating.—18 W. R., Cr., 61.

Cheating by personation.

416. A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is.

Explanation.—The offence is committed whether the individual personated is a real or imaginary person.

Illustrations.

(*a.*) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(*b.*) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

Punishment for cheating.

417. Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Cheating with knowledge that wrongful loss may be thereby caused to a person whose interest the offender is bound to protect.

418. Whoever cheats, with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates he was bound either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

419. Whoever cheats by personation shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for cheating by personation.

420. Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter, or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Cheating and dishonestly inducing a delivery of property.

OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY.

421. Whoever dishonestly or fraudulently removes, conceals, or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property, intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors.

See s. 206, *supra*.

422. Whoever dishonestly or fraudulently prevents any debt or demand due to himself or to any other person from being made available, according to law, for payment of his debts or the debts of such other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonestly or fraudulently preventing from being made available for his creditors a debt or demand due to the offender.

423. Whoever dishonestly or fraudulently signs, executes or becomes a party to any deed or instrument which purports to transfer or subject to any charge any property, or any interest therein, and which contains any false statement relating to the consideration for such transfer or charge

Dishonest or fraudulent execution of deed of transfer containing a false statement of consideration.

or relating to the person or persons for whose use or benefit it is really intended to operate, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Dishonest or fraudulent removal or concealment of property.

424. Whoever dishonestly or fraudulently conceals or removes any property of himself or any other person, or dishonestly or fraudulently assists in the concealment or removal thereof, or dishonestly releases any demand or claim to which he is entitled, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

A, B, and C were partners. Property belonging to the partnership had been placed in the custody of C. A and B had broken into the place where C kept the property, and stolen it. *Held*, that C was bailee and trustee for all parties; and there was no doubt, from the way in which the prisoners removed the property, that they themselves considered the possession was in C.—Kerferd and Box's Victoria Dig., 78.

OF MISCHIEF.

Mischief.

425. Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property, or in the situation thereof, as destroys or diminishes its value or utility or affects it injuriously commits 'mischief.'

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation. 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations.

(*a*) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(*b*.) A introduces water into an ice-house belonging to Z. and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(*c*) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(*d.*) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.

(*e.*) A, having insured a ship, voluntarily causes the same to be cast away, with the intention of causing damage to the underwriters. A has committed mischief.

(*f.*) A causes a ship to be cast away, intending thereby to cause damage to Z, who has lent money on bottomry on the ship. A has committed mischief.

(*g.*) A, having joint property with Z in a horse, shoots the horse, intending thereby to cause wrongful loss to Z. A has committed mischief.

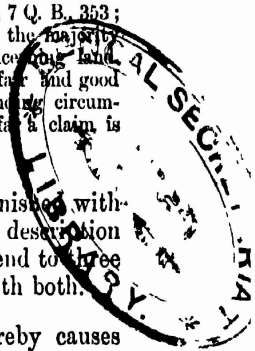
(*h.*) A causes cattle to enter upon a field belonging to Z, intending to cause, and knowing that he is likely to cause, damage to Z's crop. A has committed mischief.

The malicious tearing down or disfiguring of placards, notices, &c., emanating from any public authority, is punishable in Germany with six months' imprisonment and a fine of three hundred marks.—G. P. C., 134. Such an act is punishable in India (wrongful loss proved) as mischief. See s. 477, *infra*, where the wrongful loss is obvious.

The word property in s. 425 is perhaps wide enough to include what in England are called incorporeal rights. The soil of a town moor was vested in the corporation of the town in fee, but freemen and widows of deceased freemen of the town were under statute entitled to the "full right and benefit to the herbage" of the town moor for two milch cows:—*Held*, that this right to the herbage was not "any real or personal property whatsoever" within the meaning of the Malicious Injuries to Property Act (24 and 25 Vict., c. 97), s. 52, which applies only to tangible property and not to a mere incorporeal right.—*Laws* v. *Eltringham*, 8 Q. B. D., 283.

Section 425 of the Penal Code corresponds to 24 and 25 Vict., c. 97, s. 52. The English law uses the words "wilfully or maliciously." There is a proviso to the section as follows:—"Provided that nothing herein contained shall extend to any case where the party acted under a *fair and reasonable* supposition that he had a right to do the act complained of, nor to any trespass, not being wilful and malicious, committed in hunting, fishing, or in the pursuit of game, but that every such trespass shall be punishable in the same manner as if this act had not been passed." Mere assertion of claims of property or right go for nothing, and the rulings in India are far stronger on this point than in England.—See notes under s. 378, *supra*. In England a mere assertion of *bona fides* does not oust the jurisdiction of the Justices. Owing to the prevalence of erroneous ideas regarding the English law on this point, justice is often denied by weak or lazy Magistrates, who refer parties to the Civil Courts in cases where distinct offences have been committed, thereby aiding the stronger and richer party to triumph over the weaker. In England it has been ruled over and over again that if the evidence be such as fairly to justify the Justices in finding that the accused did not act under a

fair and reasonable supposition that he had a right to do the act complained of, they may convict.—*White* v. *Feast*, Law Rep., 7 Q. B. 353; *Denny* v. *Thwaites*, Law Rep., 2 Ex. Div., 21. In India the majority of cases are connected with, or arise out of, disputes concerning land. The accused must show by evidence that his claim is a fair and good claim. The previous history of the land, the surrounding circumstances, and previous litigation, often tend to show how far a claim is or is not reasonable.



Punishment for committing mischief.

426. Whoever commits mischief shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both.

Committing mischief and thereby causing damage to the amount of fifty rupees.

427. Whoever commits mischief, and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section 445 of the French Penal Code enacts that whoever cuts down or damages trees *which he knows to belong to another*, is liable to from six days to six months' imprisonment for each tree so cut or damaged, provided the total imprisonment do not exceed five years. Under this section it has been ruled by the Court of Cassation that to break or damage trees planted by the Mayor on the market-place of a commune constitutes the offence, even though such plantation was illegal and contrary to the decisions of administrative authority.—Cass., 17th February 1854.

Under this section would fall many sorts of injuries specially provided for in England, *e.g.*, injuries to ponds and fisheries, to electric telegraphs, to works of art, science, or literature, &c. Section 427 of the Penal Code corresponds to 24 and 25 Vict., c. 97, s. 51; but the English statute raises the punishment to penal servitude for five years and not less than three, if the offence be committed between 9 P.M. and 6 A.M.

Mischief by killing or maiming any animal of the value of ten rupees.

428. Whoever commits mischief by killing, poisoning, maiming, or rendering useless any animal or animals of the value of ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

Cases sometimes occur in India of Sahebs shooting at cattle trespassing on their gardens or premises. It has been ruled in America that a man may use all means necessary to drive trespassing animals

out of his field, and if it results in the mutilation of the animals, it is not criminal.—11 Ill., App., 332.

But it would appear that the land should be sufficiently protected or fenced. Defendant was indicted for wantonly killing a horse which came into his field and damaged his crop. *Held*, that the State should have made proof that the crop was not properly protected, in order to establish the fact of wanton killing, the evidence against defendant otherwise not establishing such fact.—12 Tex., App., 11.

Section 453 of the French Penal Code enacts that those who kill certain animals specified *without necessity* are punishable with from two months to six months' imprisonment, if the animal is killed on the land of its owner, with from six days to one month's imprisonment, if the offender kills the animal on his own land, and with from fifteen days to six weeks' imprisonment, if the animal is killed in any other place. The maximum punishment must be inflicted, where the offence has been committed after breaking into an enclosure. Under English law everyone who wilfully kills any animal with intent to steal the carcase, skin, or any part of the animal so killed, commits felony, and is liable upon conviction thereof to the same punishment as if he had been convicted of feloniously stealing the same, provided the offence of stealing the animal so killed is felony.—24 & 25 Vict., c. 96, s. 11.

Mischief by killing or maiming cattle, &c., or any animal of the value of fifty rupees.

429. Whoever commits mischief by killing, poisoning, maiming, or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow, or ox, whatever may be the value thereof, or any other animal of the value of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to works of irrigation or by wrongfully diverting water.

430. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, diminution of the supply of water for agricultural purposes, or for food or drink for human beings or for animals which are property, or for cleanliness, or for carrying on any manufacture, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

Mischief by injury to public road, bridge, or river.

431. Whoever commits mischief by doing any act which renders, or which he knows to be likely to render, any public road, bridge, navigable river, or navigable channel, natural or artificial, impassable or less safe for travelling or conveying property, shall be punished with imprisonment of either description for a

term which may extend to five years, or with fine, or with both.

No person has a right to dig on his own land so as to endanger the safety of the highway or to cause the earth to fall down.—27 Hun. (N. Y.), 568.

Magistrates in India are somewhat lax in the protection of public rights. Monstrous claims are often put forward by private owners, quite opposed to the common law, which, it should be borne in mind, is far more favourable to public and customary rights than the English common law. The banks and towing-paths of navigable rivers should be preserved intact. See Reg. XI, 1825, s. 5, and also Reg. IX, 1825, s. 9, &c. In England destruction of, or injury to, a towing-path, is a felony, and punishable with penal servitude for life, or for any term *not less than three years*. Other injuries to public property are punished with equal severity.

See s. 283, *supra*. In England everyone is guilty of a common nuisance, who wilfully diverts or obstructs the course of any navigable river so as appreciably to diminish its convenience for purposes of navigation, even although the alteration may, upon the whole, be for the convenience of the public.—1 Russ. Cr., 531; *R.* v. *Randall*, C. & M., 496; *R.* v. *Russell*, 3 E. & B., 942.

The Roman law declared all navigable rivers to be so far public property, that a free passage over them was open to everybody, and the use of their banks (jus littoris) for anchoring vessels, lading and unlading cargo, and acts of the like kind, to be incapable of restriction by any right of private domain.—Inst. l. ii, tit. i, ss. 1—5; Dig. l. i, tit. viii, s. 5. "Flumina antem omnia et portus *publica* sunt." The right to the shores is incident to the use of the water. See Phillimore's International Law. A decision of two Judges of the Calcutta High Court, allowing a claim to "konta-gara," *i. e.*, a fee or rent levied for allowing boats to be moored alongside a bank, is opposed to the civil law, and also to the customary and statute-law of India.

Mischief by causing inundation or obstruction to public drainage attended with damage.

432. Whoever commits mischief by doing any act which causes, or which he knows to be likely to cause, an inundation or an obstruction to any public drainage attended with injury or damage, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

The fact that the accused desired to protect his own property may be considered in mitigation of punishment, but it is not a complete defence. The German Penal Code provides for such a case. The ordinary punishment is reclusion, but if the author of the inundation had no other intention than to protect his own property, the punishment shall be imprisonment for one year at least.—G. P. C., 313.

"Doing any act." Words which refer to acts done extend also to illegal omissions, s. 32, *supra*. "In China, the responsible persons neglecting to repair private embankments at the proper seasons are liable

to a punishment of 30 blows; and if any damage ensues in consequence of such neglect, to a punishment of 50 blows. Nevertheless, in respect to those sudden and impetuous inundations, which are produced by heavy rains, or other similar causes, and which sometimes wash away, and break down irresistibly, all ordinary embankments; as it is not in the power of man always to foresee and guard against such accidents, the parties usually held responsible shall not be liable in such cases to any punishment."—China P. C., 434.

Mischief by destroying or moving or rendering less useful a lighthouse or seamark, or by exhibiting false lights.

433. Whoever commits mischief by destroying or moving any lighthouse or other light used as a seamark, or any seamark or buoy or other thing placed as a guide for navigators, or by any act which renders any such lighthouse, seamark, buoy, or other such thing as aforesaid less useful as a guide for navigators, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

Mischief by destroying or moving, &c., a landmark fixed by public authority.

434. Whoever commits mischief by destroying or moving any landmark fixed by the authority of a public servant, or by any act which renders such landmark less useful as such, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Mischief by fire or explosive substance with intent to cause damage to amount of one hundred rupees.

435. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, damage to any property to the amount of one hundred rupees or upwards, or (where the property is agricultural produce) ten rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Mischief by fire or explosive substance with intent to destroy a house, &c.

436. Whoever commits mischief by fire or any explosive substance, intending to cause, or knowing it to be likely that he will thereby cause, the destruction of any building which is ordinarily used as a place of worship or as a human dwelling, or as a place for the custody of property, shall be punished with transportation for life, or with imprisonment of either description for

a term which may extend to ten years, and shall also be liable to fine.

Under s. 434 of the French Penal Code the penalty is death, *whether the dwelling does or does not belong to the offender.* The punishment is imprisonment for life, if the offender has set fire to uninhabited buildings, forests, underwood, or stacked crops, *which do not belong to him.* In every case, if the conflagration has caused the death of any person on the premises at the time, the punishment is death.

Section 309 of the German Penal Code enacts that whoever, *by negligence or imprudence*, causes a fire to buildings, magazines, stores, agricultural produce, crops, forests, &c., will be punished with imprisonment for one year and a fine of 900 marks; the imprisonment to be from one month to three years, if the fire has caused the death of any person.

Evidence of experiments made subsequently to the fire is admissible in order to shew the way in which the building was set on fire.—*R.* v. *Hesseltine*, 12 Cox, C. C., 404.

Mischief with intent to destroy or make unsafe a decked vessel or a vessel of twenty tons burden.

437. Whoever commits mischief to any decked vessel or any vessel of a burden of twenty tons or upwards, intending to destroy or render unsafe, or knowing it to be likely that he will thereby destroy or render unsafe, that vessel, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for the mischief described in the last section when commited by fire or any explosive substance.

438. Whoever commits or attempts to commit by fire or any explosive substance such mischief as is described in the last preceding section, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Punishment for intentionally running vessel aground or ashore with intent to commit theft, &c.

439. Whoever intentionally runs any vessel aground or ashore, intending to commit theft of any property contained therein, or to dishonestly misappropriate any such property, or with intent that such theft or misappropriation of property may be committed, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Mischief committed after preparation made for causing death or hurt.

440. Whoever commits mischief, having made preparation for causing to any person death or hurt or wrongful restraint, or fear of death or of hurt or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine.

OF CRIMINAL TRESPASS.

Criminal trespass.

441. Whoever enters into or upon property in the possession of another with intent to commit an offence, or to intimidate, insult or annoy any person in possession of such property; or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit 'criminal trespass.'

It would seem that a man who enters the house of another, in order to carry out an illicit intrigue with an unmarried female or widow of the family, is not liable to punishment. The words "knowing that he is likely to" which occur in s. 425 are omitted in this section. Therefore the maxim 'a man is presumed to intend the probable consequences of his acts' does not apply as it would in the case of s. 425, &c. 'With intent to' means 'with the purpose of.' *Quære*—is it advisable to alter the law on this point in an eastern country? The wording of the China Penal Code gets over the difficulty: "all persons, who *unauthorizedly and without lawful cause*, enter the dwelling-house of a stranger by night shall be punishable, at the least, with 80 blows."—China P. C., 277. To carry on an illicit intrigue, even by previous assignation, can scarcely be called 'a lawful cause,' though it may not be 'illegal.' See definition of illegal, s. 43, *supra*. Compare the use of the words "for any *unlawful* purpose" in s. 551 of the Criminal Procedure Code.

If a person comes into a house, or is in it, and disturbs the peace of the family, although no assault has been committed, the master of the house may turn him out or call a policeman to do so.—*Shaw* v. *Chairitie*, 3 C. & K., 21. In India the right of private defence in such a case might extend to the causing of grievous hurt. (See s. 104, *supra*.)

In disposing of criminal trespass and mischief cases, a Magistrate must often decide questions of title. Even in England, where it is intended to oust jurisdiction by a claim of right, some reason for it must be shown. In a case, where persons were charged under 1 and 2 Will. IV, c. 32, s. 20, with trespassing in pursuit of game, they set up a right to shoot on the spot in question, alleging that the land was theirs by purchase. The Justices convicted them, as, *though the claim was made bonâ fide*, they did not succeed in producing any reasonable evidence to show a title: *Held*, that the jurisdiction of the Justices was not ousted.—*Watkins* v. *Smith*, 38 L. T., 525. The mere absence of a guilty mind on the part of a defendant does not oust jurisdiction. And the terms of a Statute (as *e. g.*, 24 and 25 Vic., c. 97, s.52) may

sustain the jurisdiction of the Justices where the defendant's belief in his right is *bonâ fide*, if it is *unreasonable*.— *White* v. *Feast*, 26 L. T., 611; *R.* v. *Mussett*, 25 L. T., N. S., 429. And where Justices are empowered by statute to ascertain a certain fact, which necessarily involves a question of title, their jurisdiction remains. In the case of *Williams* v. *Adams* (31 L. J., M. C., 109), on the hearing of a complaint under 5 and 6 Will. IV, c. 50, s. 73, for leaving rubbish on a highway after notice to remove it, the defendant, who was the owner of the land on both sides of the alleged highway, denied it to be a highway; and as he claimed the soil subject to a private right of way only, he contended that the Justices ought not to adjudicate in the matter, on the ground that title to land came in question. The objection was held untenable, for that the Justices had jurisdiction under the statute to determine whether the road was a highway or not. Where there is evidence before Justices relative to a claim of right, both *pro* and *con*, it becomes a question of fact to be decided by them, and their jurisdiction is not ousted (cf. *ex parte Bailey*, 3 E. and B., 607—622). The above remarks are worthy of the attention of High Court Judges, when magisterial orders under s. 133, C. P. C., come before them on revision. The rulings in I. L. R., 11 Cal., 8, and 12 Cal., 137, go too far in narrowing and curtailing the jurisdiction of Magistrates. Magistrates have to come to a decision on conflicting claims and questions of title in cases under s. 425, P. C. (mischief). Probably High Court Judges are afraid to trust the discretion of Magistrates, because s. 133, C. P. C., enacts that no order duly made under that section can be called in question in any Civil Court. This unwillingness to trust Magistrates is, in India, a fruitful source of strained and unsound rulings, and leads to much uncertainty and contradiction in the rulings of the various High Courts.

House-trespass.

442. Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling, or any building used as a place for worship or as a place for the custody of property, is said to commit 'house-trespass.'

Explanation.—The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

Lurking house-trespass.

443. Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent or vessel which is the subject of the trespass, is said to commit 'lurking house-trespass.'

Lurking house-trespass by night.

444. Whoever commits lurking house-trespass after sunset and before sunrise, is said to commit "lurking house-trespass by night."

445. A person is said to commit 'house-breaking' who commits house-trespass, if he effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house or any part of it for the purpose of committing an offence, or having committed an offence therein, he quits the house or any part of it in any of such six ways, that is to say:—

House-breaking.

First.—If he enters or quits through a passage made by himself, or by any abettor of the house-trespass, in order to the committing of the house-trespass.

Secondly.—If he enters or quits through any passage not intended by any person other than himself or an abettor of the offence for human entrance; or through any passage to which he has obtained access by scaling or climbing over any wall or building.

Thirdly.—If he enters or quits through any passage which he or any abettor of the house-trespass has opened in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

Fourthly.—If he enters or quits by opening any lock in order to the committing of the house-trespass or in order to the quitting of the house after a house-trespass.

Fifthly.—If he effects his entrance or departure by using criminal force or committing an assault, or by threatening any person with assault.

Sixthly.—If he enters or quits by any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor of the house-trespass.

Explanation.—Any out-house or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section.

Illustrations.

(*a.*) A commits house-trespass by making a hole through the wall of Z's house and putting his hand through the aperture. This is house-breaking.

(*b.*) A commits house-trespass by creeping into a ship at a port-hole between decks. This is house-breaking.

(*c.*) A commits house-trespass by entering Z's house through a window. This is house-breaking.

(*d.*) A commits house-trespass by entering Z's house through the door, having opened a door which was fastened. This is house-breaking.

(*e.*) A commits house-trespass by entering Z's house through the door, having lifted a latch by putting a wire through a hole in the door. This is house-breaking.

(*f.*) A finds the key of Z's house-door, which Z had lost, and commits house-trespass by entering Z's house, having opened the door with that key. This is house-breaking.

(*g.*) Z is standing in his doorway. A forces a passage by knocking Z down, and commits house-trespass by entering the house. This is house-breaking.

(*h.*) Z, the door-keeper of Y, is standing in Y's doorway. A commits house-trespass by entering the house, having deterred Z from opposing him by threatening to beat him. This is house-breaking.

"Although a consent be given to an entrance to one part of a house, yet an entrance into any other part, by any of the means and with the intent described (that is, secretly, or by force, or threats, or fraud, with intent to commit a crime), constitutes the offence of house-breaking."—Lou. P. C., 607. This is only common sense. I once punished a minor zemindar for breaking into the female apartments of his mother and grandmother with intent to get at treasure (the will constituted the mother sole guardian and gave her a certain portion of the house), but my decision was upset on appeal. The Calcutta High Court have ruled that a member of a joint family may be guilty of criminal trespass if he enters the room ordinarily occupied by another member of the family.—15 W. R., Cr., 6.

House-breaking by night.

446. Whoever commits house-breaking after sunset and before sunrise is said to commit "house-breaking by night."

In England, the breaking into or breaking out of occupied premises between the hours of 9 P. M. and 6 A. M. constitutes burglary.

Punishment for criminal trespass.

447. Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

Punishment for house-trespass.

448. Whoever commits house-trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

House-trespass in order to the commission of an offence punishable with death.

449. Whoever commits house-trespass in order to the committing of any offence punishable with death, shall be punished with transportation for life, or with rigorous imprisonment for a term not exceeding ten years, and shall also be liable to fine.

450. Whoever commits house-trespass in order to the committing of any offence punishable with transportation for life, shall be punished with imprisonment of either description for a term not exceeding ten years, and shall also be liable to fine.

House-trespass in order to the commission of an offence punishable with transportation for life.

451. Whoever commits house-trespass in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to seven years.

House-trespass in order to the commission of an offence punishable with imprisonment.

452. Whoever commits house-trespass, having made preparation for causing hurt to any person or for assaulting any person, or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

House-trespass after preparation made for causing hurt to any person.

453. Whoever commits lurking house-trespass or house-breaking shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine. [Also punishable with whipping; see Act VI of 1864, ss. 2 & 3.]

Punishment for lurking house-trespass or house-breaking.

454. Whoever commits lurking house-trespass or house-breaking in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to ten years.

Lurking house-trespass or house-breaking in order to the commission of an offence punishable with imprisonment.

455. Whoever commits lurking house-trespass or house-breaking, having made preparation for causing hurt to any person, or for assaulting any person or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Lurking house-trespass or house-breaking after preparation made for causing hurt to any person.

456. Whoever commits lurking house-trespass by night, or house-breaking by night, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. [Also punishable with whipping; see Act VI of 1864, ss. 2 & 3.]

Punishment for lurking house-trespass or house-breaking by night.

457. Whoever commits lurking house-trespass by night, or house-breaking by night, in order to the committing of any offence punishable with imprisonment, shall be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine; and if the offence intended to be committed is theft, the term of the imprisonment may be extended to fourteen years.

Lurking house-trespass or house-breaking by night in order to the commission of an offence punishable with imprisonment.

458. Whoever commits lurking house-trespass by night, or house-breaking by night, having made preparation for causing hurt to any person, or for assaulting any person or for wrongfully restraining any person, or for putting any person in fear of hurt or of assault or of wrongful restraint, shall be punished with imprisonment of either description for a term which may extend to fourteen years, and shall also be liable to fine.

Lurking house-trespass or house-breaking by night, after preparation made for causing hurt to any person.

459. Whoever, whilst committing lurking house-trespass or house-breaking causes grievous hurt to any person, or attempts to cause death or grievous hurt to any person, shall be punished with transportation

Grievous hurt caused whilst committing lurking house-trespass or house-breaking.

for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

All persons jointly concerned in house-breaking, &c., to be punishable for death or grievous hurt caused by one of their number.

460. If, at the time of the committing of lurking-house-trespass by night or house-breaking by night, any person guilty of such offence shall voluntarily cause or attempt to cause death or grievous hurt to any person, every person jointly concerned in committing such lurking house-trespass by night or house-breaking by night, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Dishonestly breaking open any closed receptacle containing or supposed to contain property.

461. Whoever dishonestly, or with intent to commit theft, breaks open or unfastens any closed receptacle which contains or which he believes to contain property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for same offence when committed by person entrusted with custody.

462. Whoever, being entrusted with any closed receptacle which contains or which he believes to contain property, without having authority to open the same, dishonestly, or with intent to commit mischief, breaks open or unfastens that receptacle, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE OR PROPERTY MARKS.

Forgery.

463. Whoever makes any false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property or to enter into any express or im-

plied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

Forgery by English law is the making of a false document with intent to defraud, or by which any person may be injured. It may be committed—

(*a*) by in any way making a document to purport to be what in fact it is not;

(*b*) by altering a document without authority in such manner as to alter its effect;

(*c*) by introducing into a document without authority, whilst it is being drawn up, matter altering its effect;

(*d*) by signing a document in the name of any person without his authority;

(*e*) by signing a document in the name of any fictitious person.

Three circumstances are essential to the crime of forgery of public or commercial documents: (1) alteration of the truth; (2) intention to harm; (3) possibility of a mistake.—Cass., 17th July 1835. I once had a case before me in which the registration endorsements and identification together with the Sub-Registrar's seal had been forged in so clumsy a manner, that there was no possibility of mistake.

A written order for a pint of whiskey, to which the name of a person is signed without his authority, is within Alaska Code, s. 4340, defining forgery in the second degree.—65 Ala., 553.

Making a false document.

464. A person is said to make a false document—

First—Who dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed; or

Secondly—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document, knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised

upon him he does not, know the contents of the document or the nature of the alteration.

Illustrations.

(*a.*) A has a letter of credit upon B for rupees 10,000 written by Z. A, in order to defraud B, adds a cipher to the 10,000, and makes the sum 1,00,000, intending that it may be believed by B that Z so wrote the letter. A has committed forgery.

(*b.*) A without Z's authority affixes Z's seal to a document purporting to be a conveyance of an estate from Z to A, with the intention of selling the estate to B, and thereby of obtaining from B the purchase-money, A has committed forgery.

(*c.*) A picks up a cheque on a banker signed by B, payable to bearer, but without any sum having been inserted in the cheque. A fraudulently fills up the cheque by inserting the sum of ten thousand rupees. A commits forgery.

(*d.*) A leaves with B, his agent, a cheque on a banker, signed by A without inserting the sum payable, and authorizes B to fill up the cheque by inserting a sum not exceeding ten thousand rupees for the purpose of making certain payments. B fraudulently fills up the cheque by inserting the sum of twenty thousand rupees. B commits forgery.

(*e.*) A draws a bill of exchange on himself in the name of B without B's authority, intending to discount it as a genuine bill with a banker, and intending to take up the bill on its maturity. Here, as A draws the bill with intent to deceive the banker by leading him to suppose that he had the security of B, and thereby to discount the bill, A is guilty of forgery.

(*f.*) Z's will contains these words—"I direct that all my remaining property be equally divided between A, B and C." A dishonestly scratches out B's name, intending that it may be believed that the whole was left to himself and C. A has committed forgery.

(*g.*) A endorses a Government promissory note and makes it payable to Z or his order, by writing on the bill the words "Pay to Z or his order," and signing the endorsement. B dishonestly erases the words "Pay to Z or his order," and thereby converts the special endorsement into a blank endorsement. B commits forgery.

(*h.*) A sells and conveys an estate to Z. A afterwards, in order to defraud Z of his estate, executes a conveyance of the same estate to B, dated six months earlier than the date of the conveyance to Z, intending it to be believed that he had conveyed the estate to B before he conveyed to Z. A has committed forgery.

(*i.*) Z dictates his will to A. A intentionally writes down a different legatee from the legatee named by Z, and, by representing to Z that he has prepared the will according to his instructions, induces Z to sign the will. A has committed forgery.

(*j.*) A writes a letter and signs it with B's name without B's authority, certifying that A is a man of good character and in distressed circumstances from unforeseen misfortune, intending by means of such letter to obtain alms from Z and other persons. Here, as A made a false document in order to induce Z to part with property, A has committed forgery.

(*k.*) A, without B's authority, writes a letter and signs it in B's name, certifying to A's character, intending thereby to obtain employment under Z. A has committed forgery, inasmuch as he intended to deceive Z by the forged certificate and thereby to induce Z to enter into an expressed or implied contract for service.

Explanation 1.—A man's signature of his own name may amount to forgery.

Illustrations.

(*a.*) A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name. A has committed forgery.

(*b.*) A writes the word 'accepted' on a piece of paper and signs it with Z's name, in order that B may afterwards write on the paper a bill of exchange drawn by B upon Z, and negotiate the bill as though it had been accepted by Z. A is guilty of forgery; and if B knowing the fact draws the bill upon the paper pursuant to A's intention, B is also guilty of forgery.

(*c.*) A picks up a bill of exchange payable to the order of a different person of the same name. A endorses the bill in his own name, intending to cause it to be believed that it was endorsed by the person to whose order it was payable: here A has committed forgery.

(*d.*) A purchases an estate sold under execution of a decree against B. B, after the seizure of the estate, in collusion with Z, executes a lease of the estate to Z at a nominal rent and for a long period, and dates the lease six months prior to the seizure with intent to defraud A and to cause it to be believed that the lease was granted before the seizure. B, though he executes the lease in his own name, commits forgery by antedating it.

(*e.*) A, a trader, in anticipation of insolvency, lodges effects with B, for A's benefit, and with intent to defraud his creditors, and in order to give a colour to the transaction, writes a promissory note binding himself to pay to B a sum for value received, and antedates the note, intending that it may be believed to have been made before A was on the point of insolvency. A has committed forgery under the first head of the definition.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Illustration.

A draws a bill of exchange upon a fictitious person, and fraudulently accepts the bill in the name of such fictitious person with intent to negotiate it. A commits forgery.

The alteration of an instrument to constitute forgery under Minnesota Gen. St., 1878, must be such as to alter its legal effect, and not a mere verbal alteration.—27 Minn., 315.

Punishment of forgery.

465. Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both. [Also punishable with whipping on second conviction. Act VI of 1864.]

Where a clerk, who had committed criminal breach of trust, subsequently made false entries in an account-book, with the intention of

concealing such offence,—*held*, that the making of such entries did not constitute the offence of forgery.—I. L. R., 5 All., 221.

Persons accused under this section are sometimes acquitted on the ground that they had no intent to defraud. In England, in 1875, it was found necessary to pass an Act (introduced by Sir John Lubbock) which made it a specific offence, punishable with seven years' penal servitude, for any clerk, officer, or servant wilfully to falsify any account or to omit to make any entry in any account. In some cases, in which convicted persons have been acquitted on revision, the High Court might have altered the conviction to one under s. 192, P. C. But the English Act covers many cases which would not even fall under 192. Sections 166 and 218 refer to public servants only.

Forgery of a record of a Court of Justice or of a public register of births, &c.

466. Whoever forges a document purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage, or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power-of-attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Ruled, by the Court of Cassation in Paris, that a false declaration in a birth register (acte de naissance) that the mother of the child is the legitimate wife of the declarant, does not constitute forgery of a public document (faux en écriture publique).—Cass., 24th Feb. 1870. But the offence is committed by a man who signs in the name of another person a demand for admission to the examination for degrees, and places the same signature on the examination papers and registers intended to establish the identity of the candidate. Cass., 24th Dec. 1863. This is an offence that has more than once been committed at University examinations in India.

Forgery of a valuable security or will.

467. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any moveable property or valuable security, shall be punished with

transportation for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Forgery for the purpose of cheating.

468. Whoever commits forgery, intending that the document forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

Forgery for the purpose of harming the reputation of any person.

469. Whoever commits forgery, intending that the document forged shall harm the reputation of any party, or knowing that it is likely to be used for that purpose, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine. [Also punishable with whipping on second conviction. Act VI of 1864.]

'A forged document.'

470. A false document made wholly or in part by forgery is designated 'a forged document.'

"Using as genuine a forged document."

471. Whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document.

When it becomes necessary, in a criminal prosecution, to show a particular intent in order to establish the offence charged, proof of previous acts of the same kind is admissible for that purpose.—48 Mich., 49.

See s. 14 of Evidence Act. Upon a trial for uttering a forged deed, evidence that defendant had in his possession and had uttered other similar forged deeds in pursuance of a general scheme, was held admissible.—38 Ohio St., 507.

Where the prisoner used four receipts for rent in the place of genuine receipts which he had lost,—*held*, no offence under s. 471, having regard to the definitions of 'dishonestly' and 'fraudulently'—(ss. 24, 25, *supra*).—I. L. R., 7 All., 459.

472. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under section 467, or with such intent has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery punishable under section 467.

See note, s. 27, *supra*.

473. Whoever makes or counterfeits any seal, plate or other instrument for making an impression, intending that the same shall be used for the purpose of committing any forgery which would be punishable under any section of this chapter other than section 467, or with such intent has in his possession any such seal, plate or other instrument, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Making or possessing a counterfeit seal, plate, &c., with intent to commit a forgery punishable otherwise.

474. Whoever has in his possession any document, knowing the same to be forged, and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document is one of the description mentioned in section 466, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Having possession of a valuable security or will known to be forged with intent to use it as genuine.

475. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to

Counterfeiting a device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material.

be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Counterfeiting a device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material.

476. Whoever counterfeits upon or in the substance of any material any device or mark used for the purpose of authenticating any document other than the documents described in section 467, intending that such device or mark shall be used for the purpose of giving the appearance of authenticity to any document then forged or thereafter to be forged on such material, or who with such intent has in his possession any material upon or in the substance of which any such device or mark has been counterfeited, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See under s. 415, *supra*.

Fraudulent cancellation, destruction, &c., of a will.

477. Whoever fraudulently or dishonestly, or with intent to cause damage or injury to the public or to any person, cancels, destroys, or defaces, or attempts to cancel, destroy, or deface, or secretes or attempts to secrete any document which is or purports to be a will, or an authority to adopt a son, or any valuable security, or commits mischief in respect to such document, shall be punished with transportation for life, or with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

See under s. 30, *supra*.

The destruction of a certificate of birth, marriage, or burial would not fall under this section. Such destruction, with intent to injure another in his civil or political rights, is punishable with from seven to fifteen years' hard labour under art. 575 of Louisiana Penal Code.

OF TRADE AND PROPERTY MARKS.

Trade-mark.

478. A mark used for denoting that goods have been made or manufactured by a particular person or at a particular time or place,

or that they are of a particular quality, is called a trade-mark.

"The use of a trade-mark," says Paterson, "is a convenient mode of identifying the manufacturer or finisher of a particular article of commerce, which without some distinctive mark might be easily confounded with others nearly resembling it. It is a legitimate mode of signifying to the public this identification, as showing where, or by whom, or by what manufactory, an article was made; and, as it tends to prevent deception and fraud, the law lends its aid to protect the use of the mark, and so to enhance the value of the goods and secure to purchasers what they believe they are purchasing. Where a manufacturer has been in the habit of stamping his goods with a particular mark or brand, so that thereby persons purchasing goods of that description know them to be of his manufacture, no other manufacturer has a right to adopt the same stamp."

In England, in 1875, a definite system of registration was adopted, by which the rightful owner may register his trade-mark with the Commissioners of Patents, and so make it more readily ascertainable by all who are interested in knowing it.—38 and 39 Vict., c. 91; 40 and 41 Vict., c. 37. The registration of the trade-mark is made a condition precedent to any remedy against infringement. But while the Court will by injunction protect the registered proprietor against infringement, it must appear that the circumstances are such as would mislead a person of ordinary care and sagacity.—*Singer Co.* v. *Wilson*, 2 Ch. D., 434.

Property-mark.

479. A mark used for denoting that moveable property belongs to a particular person is called a property-mark.

Using a false trade-mark.

480. Whoever marks any goods, or any case, package, or other receptacles containing goods, or uses any case, package, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked, or any goods contained in any such case, package, or receptacle so marked, were made or manufactured by any person by whom they were not made or manufactured, or that they are made or manufactured at any time or place at which they were not made or manufactured, or that they were of a particular quality of which they are not, is said to use a false trade-mark.

"The New York Penal Code defines "goods" as including every kind of goods, works, merchandise, *compound or preparation*, which may be lawfully kept or offered for sale." Section 417 of the same Code provides a penalty for refilling beer, mineral water, &c., bottles, with intent to sell the same, without the written consent of the manufacturer or dealer, whose name, mark, or label is stamped on such bottles. There is reason to believe this is done in the China Bazar of Calcutta, and such an act falls under s. 480. So does the refilling of medicine bottles

with Calcutta or English labels on them by mofussil medicine vendors. Sections 274-276, *supra*, might apply in some cases.

Using a false property-mark.

481. Whoever marks any moveable property or goods, or any case, package, or other receptacle containing moveable property or goods, or uses any case, package, or other receptacle having any mark thereon, with the intention of causing it to be believed that the property or goods so marked, or any property or goods contained in any case, package, or other receptacle so marked, belong to a person to whom they do not belong, is said to use a false property-mark.

Punishment for using a false trade or property mark with intent to deceive or injure any person.

482. Whoever uses any false trade-mark or any false property-mark with intent to deceive or injure any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

In England the imitation of a trade-mark was not deemed a forgery of a document or writing, and so was not indictable, though an indictment for obtaining money by false pretences might lie. But now it is a misdemeanour to forge them, or apply such forged marks to goods.—25 and 26 Vict., c. 88. And it is not necessary to prove that it was intended to defraud any particular person.—*Ibid*, s. 12.

The Merchandise Marks Act protects in like manner those merchants whose marks are imitated, and enables persons wrongfully using them to be indictable for false pretences, or to be punished summarily before Justices of the Peace. The seller is bound to give information where he procured the article. A person selling articles with a trade-mark is deemed to contract that such mark is genuine; and the same if an article is marked as containing a particular quantity.

Counterfeiting a trade or property mark used by another with intent to cause damage or injury.

483. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any trade or property mark used by any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Counterfeiting a property-mark used by a public servant, or any mark used by him to denote the manufacture, quality, &c., of any property.

484. Whoever, with intent to cause damage or injury to the public or to any person, knowingly counterfeits any property-mark used by a public servant, or any mark used by a public servant, to denote that any property has been manufactured by a particular person or at a particular time or place, or that the

same is of a particular quality, or has passed through a particular office, or that it is entitled to any exemption, or uses as genuine any such mark, knowing the same to be counterfeit, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Would this section apply to marks made on trees by Forest Officers? Standing trees are immoveable property. On this subject there is a special section in the French Penal Code. Under it the Court of Cassation has ruled that, to constitute such counterfeiting, the imitation of the mark must be more or less exact.—Cass., Nov. 22nd, 1861.

485. Whoever makes or has in his possession any die, plate, or other instrument for the purpose of making or counterfeiting any public or private property or trade mark, with intent to use the same for the purpose of counterfeiting such mark, or has in his possession any such property or trade mark, with intent that the same shall be used for the purpose of denoting that any goods or merchandize were made or manufactured by any particular person or firm by whom they were not made, or at a time or place at which they were not made, or that they are of a particular quality of which they are not, or that they belong to a person to whom they do not belong, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Fraudulent making or having possession of any die, plate, or other instrument for counterfeiting any public or private property or trade mark.

See note, s. 27, *supra*.

486. Whoever sells any goods with a counterfeit property or trade mark, whether public or private, affixed to or impressed upon the same or upon any case, wrapper, or receptacle in which such goods are packed or contained, knowing that such mark is forged or counterfeit, or that the same has been affixed to or impressed upon any goods or merchandize not manufactured or made by the person or at the time or place indicated by such mark, or that they are not of the quality indicated by such mark, with intent to deceive, injure or damage any person, shall be punished with imprisonment

Knowingly selling goods marked with a counterfeit property or trade mark.

of either description for a term which may extend to one year, or with fine, or with both.

See under s. 415, *supra*.

Fraudulently making a false mark upon any package or receptacle containing goods.

487. Whoever fraudulently makes any false mark upon any package or receptacle containing goods with intent to cause any public servant or any other person to believe that such package or receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods contained in such package or receptacle are of a nature or quality different from the real nature or quality thereof, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Punishment for making use of any such false mark.

488. Whoever fraudulently makes use of any such false mark with the intent last aforesaid, knowing such mark to be false, shall be punished in the manner mentioned in the last preceding section.

Defacing any property-mark with intent to cause injury.

489. Whoever removes, destroys or defaces any property-mark, intending or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

Breach of contract of service during a voyage or journey.

490. Whoever, being bound by a lawful contract to render his personal service in conveying or conducting any person or any property from one place to another place, or to act as servant to any person during a voyage or journey, or to guard any person or property during a voyage or journey, voluntarily omits so to do, except in the case of illness or ill-treatment, shall be punished with imprisonment of either description for a term which may

extend to one month, or with fine which may extend to one hundred rupees, or with both.

Illustrations.

(*a.*) A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage. A has committed the offence defined in this section.

(*b*) A, a cooly, being bound by lawful contract to carry Z's baggage from one place to another, throws the baggage away. A has committed the offence defined in this section.

(*c.*) A, a proprietor of bullocks, being bound by legal contract to convey goods on his bullocks from one place to another, illegally omits to do so. A has committed the offence defined in this section.

(*d.*) A, by unlawful means, compels B, a cooly, to carry his baggage. B, in the course of the journey, puts down the baggage and runs away. Here, as B was not lawfully bound to carry the baggage, he has not committed any offence.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed. It is sufficient if the contract is legally made with any person, either expressly or impliedly, by the person who is to perform the service.

Illustration.

A contracts with a dak company to drive his carriage for a month. B employs the dak company to convey him on a journey, and during the month the company supplies B with a carriage which is driven by A. A, in the course of the journey, voluntarily leaves the carriage. Here, although A did not contract with B, A is guilty of an offence under this section.

In Germany and France, and on the Continent generally, many other sorts of breach of contract are punishable, such as delay in delivering stores in time of war, or in delivering food to prevent a public calamity, &c. The simple fact of delay is punishable; if the non-performance of the engagements results from negligence or imprudence, the punishment may extend to two years.—Fr. P. C., 430; Belg. P. C., 292; G. P. C., 329.

In England every person commits a misdemeanour, and is liable to a fine of £20, or to three months' imprisonment with hard labour, who wilfully and maliciously breaks a contract of service or of hiring, knowing or having reasonable cause to believe that the probable consequence of his so doing, either alone or in combination with others, will be to endanger human life, or cause serious bodily injury, or to expose valuable property, whether real or personal, to destruction or serious injury.—38 and 39 Vict., c. 86, s. 5.

Breach of contract to attend on and supply the wants of helpless persons.

491. Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who, by reason of youth, or of unsoundness of mind, or of a disease or bodily weakness, is helpless or incapable of providing for his own safety or of supply-

ing his own wants, voluntarily omits so to do, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to two hundred rupees, or with both.

Breach of a contract to serve at a distant place to which the servant is conveyed at the master's expense.

492. Whoever, being bound by lawful contract in writing to work for another person as an artificer, workman or labourer,* for a period not more than three years, at any place within British India, to which by virtue of the contract he has been or is to be conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall be punished with imprisonment of either description for a term not exceeding one month, or with fine not exceeding double the amount of such expense, or with both; unless the employer has ill-treated him or neglected to perform the contract on his part.

A mahout, or elephant-driver, is not an artificer, workman, or labourer —8 C. L. R., 254.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.

493. Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him, and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marrying again during the lifetime of husband or wife.

494. Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Exception.—This section does not extend to any person whose marriage with such husband or wife has been declared void by a Court of competent jurisdiction, nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time, provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted, of the real state of facts so far as the same are within his or her knowledge.

"A person having a wife or husband living, who shall, *without having a reasonable cause to believe such wife or husband to be dead*, contract a second marriage, is guilty of bigamy." Absence of first wife or husband for five years without intelligence is to be considered a reasonable belief of death.—Lou. P. C., 577, 578. "A third marriage, during the lifetime of the parties to the second, is bigamy, although the second marriage was contracted during the lifetime of the parties to the first, and in a manner to make it bigamy."—*Ibid*, 585.

Held, in California, that there could be no conviction for bigamy, where the evidence as to the first wife showed only that she was alive three years before the second marriage.—58 Cal., 218.

As to proof of marriage, s. 50 of the Evidence Act merely states that the opinion of a relative or person of special knowledge is *not sufficient by itself* to prove a marriage. If a man of eighty years of age committed bigamy, the witnesses to his first marriage might all be dead. It has been ruled in Iowa that, in a prosecution for bigamy, oral testimony of the lawful wife is competent to prove the marriage.—58 Iowa, 165. See under s. 497, *infra*.

An indictment for bigamy need not allege the name of the first spouse.—13 Tex., App., 76. *Held*, in New York, that it was no defence to an indictment for bigamy that the defendant was told by a Justice of the Peace that an agreement between himself and his wife was, in legal effect, a divorce.—29 Hun. (N. Y.), 628.

Held, in Alabama, that it was no defence, on a woman's trial for polygamy, that at the time of her second marriage her former husband had been absent for more than a year, and *was rumoured, and by her believed*, to be dead.—67 Ala., 84.

When the fact of continual absence for seven years has been proved, the burden of proving knowledge that the husband or wife was alive is on the prosecution.—*R.* v. *Curgerwen*, L. R., 1 C. C. R., 1.

As to abetment of bigamy, under English law everyone is a principal in the second degree who, being unmarried, knowingly enters into a marriage which renders the other party thereto guilty of bigamy.—*R.* v. *Brown and Webb*, 1 C. and K., 144.

It has been doubted whether a person commits bigamy who contracts a second marriage under a *bonâ fide* belief that the first husband or wife is dead.—*R.* v. *Turner*, 9 Cox, C. C., 145; *R.* v. *Horton*, 11 Cox, C. C., 670. The proviso in 24 and 25 Vict., c. 100, s. 57, is, that

a second marriage, after seven years' ignorance as to the life of the first husband or wife, *shall not* be criminal. Stephen, in his Digest, suggests that a person may not be guilty, even though seven years have not passed. Suppose a woman saw her husband fall overboard in the middle of the Atlantic, and saw a boat go out to search for him, and return without him; suppose that she took out administration to his estate, heard nothing of him for five years, and then married again, would she be guilty of bigamy if by some strange chance he had escaped? Surely not. Stephen says that this view was taken by Denman, J., and Amphlett, J., in a case, *R.* v. *Moore*, tried at Lincoln in 1877.

It has been held in England that the fact of there being a legal disability (independently of its bigamous character) to contract the second marriage will not take the case out of the enactment (24 and 25 Vict., c. 100, s. 57).—*The Queen* v. *Allen*, Law Rep., 1 C. C. R., 367.

The New York is much the same as the Louisiana law, but it is more liberal, as any person may marry again whose wife or husband has absented herself or himself, and has been continually remaining without the United States, for the space of five years together. And any person may marry again whose wife or husband has been sentenced to imprisonment for life. But a person whose marriage has been dissolved on account of his own, or her own, adultery, cannot marry again.—N. Y. P. C., 338, seqq.

"Persons who, being within the degrees of consanguinity within which marriages are, by s. 30 of the Civil Code, declared incestuous and void, intermarry with each other, or commit adultery or fornication with each other, are punishable by imprisonment in a State prison for ten years."—N. Y. P. C., 342.

In India there are many well-recognized grounds for divorce among the lower castes, the order for divorce being generally pronounced by the caste panchayet. Hindus proper do not permit widow-remarriage, much less remarriage in the lifetime of the first husband. In China there are seven justifying causes of divorce, namely—(1) barrenness; (2) lasciviousness; (3) disregard of her husband's parents; (4) talkativeness; (5) thievish propensities; (6) envious and suspicious temper; (7) inveterate infirmity. But a divorce cannot be had on these grounds, if any of the three reasons against a divorce should exist, namely—(1) the wife's having mourned three years for her husband's parents; (2) the family's having become rich after having been poor previous to, and at the time of, marriage; and (3) the wife's having no parents living to receive her back again. If the wife shall have broken the matrimonial connexion by an act of adultery, or by any other act, which by law not only authorizes but requires that the parties should be separated, the husband shall receive a punishment of eighty blows, if he retains her. When the husband and wife do not agree, and both parties are desirous of separation, the law limiting the right of divorce shall not be enforced to prevent it.—China P. C., 116.

In India, women of the lower castes may, in certain cases, marry again in the lifetime of their first husband. The caste panchayet sometimes gives them permission, the ground generally being the impotency or incurable disease of the husband, and sometimes wilful and continued desertion and neglect to maintain. Impotency was a *canonical* disability under the former English law, a ground for divorce *a vinculo*

regarded as necessary *pro salute animarum* (1 Bl. Com., 440), and under the new Divorce Acts, a decree of *nullity of marriage* may be obtained from the Court on any ground which would have formerly justified the Ecclesiastical Court in granting a divorce, *a vinculo*. See Steph. Com. II., 298. Where a woman of the sweeper caste had for sufficient cause married again, and was convicted of bigamy, the Calcutta High Court upset the conviction.—7 C. L. R., 354. But the Bombay High Court have refused to recognize the authority of a caste to declare a marriage void or to give permission to a woman to remarry. 2 Bom. H. C., 124; 10 Bom. A. C., 381; I. L. R., 1 Bom., 347. If marriage notions and practices are lax among any particular caste, Courts should be very chary in allowing prosecutions under ss. 497, 498, P. C. The Madras High Court have ruled that the cohabitation of a man and a woman under the Alyasantana system cannot be considered marriage, so as to render punishable a person who entices away the woman with the intent specified in s. 498.—I. L. R., 6 Mad., 374. Under this system a wife may be given in marriage by her maternal relations to another man, provided the present of money received from her husband at the first marriage be returned to him before remarriage takes place. In another case the same Court remarked: "The relation is in truth not marriage, but a state of concubinage into which the woman enters of her own choice, and is at liberty to change when and as often as she pleases."—4 M. H. C., 196. See also I. L. R., 3 All., 738. The decisions of the Bombay High Court appear to ignore well-established rules of civil law known to every moralist and jurist. That a low-caste woman should be punished because she has obeyed the order of her panchayet reminds one of Lolly's case, which was stigmatized in terms of masculine indignation by Lord Brougham from the judgment-seat. "Lolly," says Phillimore, "took the opinion of several lawyers whether his divorce was valid, and was assured it was. He married again, and was tried for bigamy; the case was referred to the Judges, who properly held the divorce invalid: and then, as if intention was no element of crime, actually sent the mistaken man to the hulks, where he remained two years. Such was the state of English jurisprudence! *His* crime, which he had done all he could to guard against, was venial ignorance of positive law—the crime of the Judges who punished him was inexcusable ignorance of natural justice, and indifference to common humanity." Grotius, in "de jure Belli et Pacis," says: "Ignorantia legis sicut inevitabilis si sit, tollit peccatum ita cum aliquâ neglijentia conjuncta delictum minuit." Probably the riper jurists of to-day would have shewn a greater consideration in Lolly's case (*R.* v. *Lolly*, R. & R., C. C. R., 237); but Phillimore's fierce and intemperate denunciation is quite undeserved. Lolly got his divorce from the Commissary or Consistorial Court of Scotland, and it had been actually held that even a divorce *à mensâ et thoro* in England was sufficient to bar a prosecution for bigamy. This doctrine was questioned in Porter's case (Cro. Car., 461), but the point was settled (1 East P. C., c. 12). Lolly's prosecution was under Statute 2 Jac. I., c. 11, which has been since repealed by 9 Geo. IV, c. 34. The new Divorce Act in France includes a 'severe criminal sentence' among the grounds for divorce. It has been urged by some that the insanity of the husband or wife for a period of two years, or a sentence of five years' penal servitude passed against either, should be a ground for divorce.

Same offence with concealment of the former marriage from the person with whom subsequent marriage is contracted.

495. Whoever commits the offence defined in the last preceding section, having concealed from the person with whom the subsequent marriage is contracted the fact of the former marriage, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Marriage ceremony gone through with fraudulent intent without lawful marriage.

496. Whoever dishonestly or with a fraudulent intention goes through the ceremony of being married, knowing that he is not thereby lawfully married, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Adultery.

497. Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another man, without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both. In such case the wife shall not be punishable as an abettor.

In Germany, adultery, which has led to divorce, is punishable with six months' imprisonment. The guilty person and his or her accomplice are both punishable—G. P. C., 172.

In Scotland, a promise of marriage, followed by *copula* on the faith of such promise, constitutes marriage, or at least is a good ground of action for declaring a marriage. The promise must be mutual cohabitation, and habit and repute are good evidence of the fact of marriage, as implying a previous consent. In England, the fact of marriage must be strictly proved in indictments for bigamy or petitions for damages against an dulterer. So in India (I. L. R., 5 Cal., 566); but the doctrine of strictness must not be pushed too far. See the remarks of the Judges in I. L. R., 9 Mad., 9. Even a marriage in England may be proved by any person who was present and saw the ceremony performed: it is not necessary to prove its registration on the license or publication of the banns —*R.* v. *Allison*, R. and R., 109; *R.* v. *Mainwaring*, Dears and B., 132; S. C., 26 L. J. (M. C.), 10.

In order to avoid collusive attempts between the husband and a pretended adulterer to obtain a divorce to the injury of the wife, or between the husband and the wife to injure an innocent person, charged as the adulterer, the Louisiana Code of Cr mes and Punishments has provided that prosecutions for adultery shall

be joint against the wife and the supposed adulterer (if he be alive), and that there can be no conviction of the one without the other, except as provided in the Procedure Code. Article 561 of the latter Code enacts that if the defendant, charged with being the adulterer, should not appear, an attorney shall be named for his defence, who shall enter a plea of "not guilty" for him, and the trial shall proceed in his absence. If he be alive, but shall have left the state before the prosecution is commenced, a warrant or citation shall issue against him, and be renewed, from time to time, for six months, until it shall be served, and until the trial shall actually take place. If he be not found, the trial may proceed, after the expiration of the six months, against the wife alone. As to adultery, Livingston remarks in his Introductory Report to the Louisiana Code of Crimes and Punishments: "As far as I am informed, it figures in the penal law of all nations except the English; and some of their most celebrated lawyers have considered the omission as a defect. Neither the immorality of the act, nor its injurious consequences on the happiness of females, and very frequently on the peace of society and the lives of its members, can be denied. Then, why it should go unpunished does not seem very clear. It is emphatically an offence of that nature in which the resentment of the injured party will prompt him to take vengeance into his own hands, and commit a greater offence if the laws of his country refuse to punish the lesser. It is the nature of man, and no legislation can alter it, to protect himself where the laws refuse their aid; very frequently where they do not . . . . where the law refuses to punish this offence, the injured party will do it for himself. Assaults, duels, assassinations, and poisonings will be the consequence. They cannot be prevented; but perhaps, by giving the aid of the law to punish the offence, which they are intended to avenge, they will be less frequent; and it will, by taking away the pretext for the atrocious acts, in a great measure insure the infliction of the punishment they deserve." In France, women may be punished for adultery with from three months' to two years' imprisonment. They can only be prosecuted on the complaint of the husband, and he cannot do so, if he keeps a concubine in the conjugal house. The husband may stop the effect of the sentence by consenting to take back his wife; the accomplice of the woman is liable to the same imprisonment, and, in addition, to a fine of from one hundred to two thousand francs. The only evidence admissible against him (except being caught in the act) is that resulting from letters or other writings. The husband, convicted on the complaint of his wife of keeping a concubine in the conjugal house, is punishable with a fine of one hundred to two thousand francs.—Fr. P. C., 336—339. In Belgium he is liable to imprisonment for from one month to one year—Belg. P. C., 389. The law as to adultery is the same in both countries. Incest is a penal offence in America, or at any rate in certain states. It has been ruled in Texas that, on a trial for incest with a stepdaughter, it must be shown that the stepfather and mother were legally man and wife.—13 Tex. App., 340. Seduction under promise of marriage, appears to be an offence in most countries. "Whoever shall seduce a woman of good reputation under a promise of marriage, and shall violate his promise, shall be fined not less than one hundred, nor more than

one thousand, dollars, or shall be imprisoned in close custody not less than one, nor more than six months"—Lou. P. C., 342. See also New York P. C., 330, which uses the words "unmarried female of previous chaste character." The subsequent marriage of the parties is a defence to a prosecution.

"In Louisiana, the word 'adultery' is used in the sense which it bears in common parlance; when committed by the wife, is an offence for which she forfeits all the matrimonial gains to which she would otherwise be entitled; she forfeits her civil rights of the first class. The person with whom a woman commits adultery shall be fined from one hundred to two thousand dollars, or be imprisoned not more than six months, or both. The husband who commits adultery, by keeping a concubine in the house with his wife, or by forcing her by ill-treatment to abandon his house, and keeping his concubine in it, shall be fined from one hundred to two thousand dollars; and his civil right of being tutor or curator to any minor, including his own children, is suspended from the time of conviction, for one year, and as much longer as he shall live with his concubine in the same house."—Lou. P. C., 311—346. A provision is required in India punishing the man who keeps a woman in the marital house. This is by no means uncommon among the lower castes, and Magistrates should always make it a ground for giving the wife separate maintenance. The practice often leads to poisonings and assassinations.

Adultery is not criminally punishable under English law. Article 170 of Stephen's Digest summarizes the ecclesiastical censures for immorality. Every person who commits incest, adultery, fornication, or any other deadly sin (not punishable at common law) is liable, on conviction in an Ecclesiastical Court, to do penance, and to be excommunicated, and to be imprisoned for six months.—13 Edw. I., c. 4; 53 Geo. III., c. 127, ss. 1—3; and see Phillimore's Eccl. Law, 1081, 1442. Stephen says that incest is the only offence which is prosecuted in these days, and that very rarely.

Incest between ascendants and descendants is punishable with five years' imprisonment for the former and two years for the latter. Cohabitation between relatives in the ascending or descending line, and between brothers and sisters, is punishable with two years' imprisonment. Those in the descending line, who have not completed their 18th year, are not punishable.—G. P. C., 173. Pimps are also punishable, if they facilitate debauchery *habitually or for an interested motive.*—*Ib.*, 180. The seduction of a chaste girl under the age of sixteen years is punishable with one year's imprisonment. The prosecution can only take place on the complaint of the father, mother or guardian of the girl seduced.—*Ib.*, 182.

I believe the punishment of the woman also for adultery would be in consonance with native ideas. The Chinese Penal Code (framed by Chinese for Chinese) contains some very stringent provisions regarding criminal intercourse in general. Criminal intercourse by mutual consent with an unmarried woman is punishable with 70 blows; if with a married woman, 80 blows. Deliberate intrigue with a married or unmarried woman is punishable with 100 blows. Rape is punishable with death by strangulation; an assault with intent to commit a rape with 100 blows and perpetual banishment to the distance of 3,000 *lee*. In all cases of a husband consenting to or conniving at the adultery of the principal or any other of his wives, the husband,

the adulterer, and the adulteress shall each be punished with 90 blows.—Chinese P. C., 366, 367. The various forms of incest are also severely punished.

The authority still exercised by some caste panchayets, resembles the old jurisdiction of the Ecclesiastical Courts in England in matters of marriage and incontinence. Archdeacon Hale mentions incest, bigamy, acting as a procuress, procuring abortion, and overlaying children. Sir James Stephen remarks that that the jurisdiction of the Courts upon subjects of this kind was so extensive that they sometimes interfered in quarrels between married people. Thus "Nicholaus Elyott notatur officio quod non tractat Margaretam uxorem suam maritali affecione." Many neighbours on both sides were called, and at last the husband was required to show cause why he should not be excommunicated. Indeed the Court extended its protection even to a mistress. John Bell not only lived in adultery with Margaret Sanfield, but said to her at last: "If I see the speke eny more with him, I shall kutt of thi nose," "prætextu quorum verborum predicta Margareta est extra se jam posita et totaliter demens effecta." Adultery was punished with extreme severity, a fine of £500 being a common punishment. In one case a woman was fined £2,000 "for notorious adultery." -Calendar of State Papers, 1633-34, p. 481. In another case, Augustine Moreland of Stroud was fined £500 for "excessive drinking, swearing most desperate oaths, and blaspheming the name of God."—*Ib.*, 1634-35, p. 330. Bigamy continued to be an ecclesiastical offence exclusively till the year 1603, when it was made felony with benefit of clergy by 1 Jas. I., c. 11. As to incest, Stephen remarks: "The only reason which I can assign why incest in its very worst forms is not a crime by the laws of England is that it is an ecclesiastical offence, and is even now occasionally punished as such. It is, I believe, the only form of immorality which in the case of the laity is still punished by Ecclesiastical Courts on the general ground of its sinfulness."

Enticing or taking away or detaining with a criminal intent a married woman.

498. Whoever takes or entices away any woman who is and whom he knows or has reason to believe to be the wife of any other man, from that man, or from any person having the care of her on behalf of that man, with intent that she may have illicit intercourse with any person, or conceals, or detains with that intent, any such woman, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

In China, when parties have been lawfully affianced to each other, and the marriage presents delivered and accepted, if the bridegroom forcibly takes away his wife previous to the period agreed upon, or if the bride is designedly retained and refused to the bridegroom, the punishment in either case is 50 blows—China P. C., 101. In India a husband often presents a petition against his wife's parents for detaining her.

CHAPTER XXI.

OF DEFAMATION.

Defamation.

499. Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

It was settled in 1851 that previous libels may be used as evidence to prove malice in a particular case—*Barrett* v. *Long*, 3 H. L. C., 395.

"Defamation is an injury offered to the reputation of another, by an allegation which is either untrue, or, if true, *is not made with a justifiable intent.*"—Lou. P. C., 363. It is an injury coming within the above definition, if the natural tendency of the words or representations used is to bring upon the person, to whom they refer, the hatred, ridicule, or contempt of the public, or *to deprive him of the benefits* of social intercourse..... If the injury be *offered*, it is sufficient; it need not actually be suffered; but the words or representations must be such as, in the ordinary course of affairs, tend to cause such injury.—*Ibid.*, 372, 376.

The law implies malice from the nature of the wrong actually done. Words have certain definite meanings known and read of all men, so that it is not so much what the person who used the words did, in the secrecy of his own mind, intend, as what those words when told to third parties will naturally mean, that the essence of the wrong consists. If words are used which in their natural meaning are libellous, and are damaging to private reputation, then malice is implied. It has been said that libel in fact is libel in law—*Bromage* v. *Prosser*, 4 B. and C., 255. "Malice, in its legal acceptation, means not personal spite, but conscious violation of the law, taken along with the maxim, that everyone must be taken to intend the necessary consequence of his deliberate acts."—*Per Ld. Campbell*, *Ferguson* v. *Kinnoul*, 9 Cl. and F., 321. Everything written or printed which reflects on the character of another, and is published without lawful justification or excuse, is a libel, whatever the intention may have been."—*Per Parke B.*, *O'Brien* v. *Clement*, 15 M. and W., 437.

Language must be construed in the sense which it naturally bears; in other words, in the sense which the majority of people hearing or reading the language would attribute to it. Lord Mansfield said: "Where words from their general import appear to have been spoken with a view to defame a party, the Court ought not to be industrious in putting a construction upon them different from what they bear in the common acceptation and meaning of them."—*Peake* v. *Oldham*, Cowp., 275.

The painting a man playing at cudgels with his wife has been held to be a libel; so the putting up and burning a certain lamp at another's door, like that commonly used before disorderly houses: also carrying a man about dressed with horns and blowing at plaintiff's door.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association or collection of persons as such.

Explanation 3.—An imputation in the form of an alternative or expressed ironically may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation unless that imputation, directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or lowers the character of that person in respect of his caste or of his calling, or lowers the credit of that person, or causes it to be believed that the body of that person is in a loathsome state, or in a state generally considered as disgraceful.

Illustrations.

(*a.*) A says, "Z is an honest man; he never stole B's watch;" intending to cause it to be believed that Z did steal B's watch. This is defamation, unless it fall within one of the Exceptions.

(*b.*) A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

(*c.*) A draws a picture of Z running away with B's watch, intending it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the Exceptions.

Imputation of any truth which the public good requires to be made or published.

First Exception.—It is not defamation to impute anything which is true concerning any person, if it be for the public good that the imputation should be made or published. Whether or not it is for the public good is a question of fact.

It is probably defamation for a doctor to give out that a man is suffering from any foul or infectious disease, if such fact has been confidentially communicated to him as a doctor. The Codes of other countries contain special provisions dealing with the disclosure of confidential communications. Section 378 of the French Penal Code imposes a penalty of from one month to six months' imprisonment and fine on doctors, surgeons, midwives and others who reveal secrets confided to them as such, except in those cases in which the law compels them to do so (hors les cas où la loi les oblige à se porter dénonciateurs). Ruled by the Court of Cassation that priests cannot be questioned concerning revelations made to them in confession. Cass., 30th Nov. 1810. There is no such special exemption in the Indian Evidence Act.

"No prosecution can be maintained for defamation on account of anything said or written, either as Judge, attorney, counsel, party or witness, in a Court of Justice in the course of a legal proceeding, provided that it be relevant to the matter before such Court, and is not introduced for the sole purpose of injuring the party to whom it refers."—Lou. P. C., 387.

Public conduct of public servants.

Second Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of a public servant in the discharge of his public function, or respecting his character, so far as his character appears in that conduct, and no farther.

By art. 201 of the French *Code Pénal*, ministers of religion who, in the exercise of their functions, deliver any discourse "contenant la critique ou censure du gouvernement, d' une loi, d' un décret du Président de la République ou de toute autre acte de l' autorité publique," may be imprisoned for two years.

With regard to the right to comment on public affairs, a public man in a free country is liable to have his public conduct freely discussed; but, as pointed out by Paterson (Lib. Press), he, as well as his critics, is entitled to the preservation of his good name and reputation from wrong. If the critic wantonly or *even by mistake of his own judgment* actually injures the reputation of any public man, then that critic is liable to an action and an indictment for defamation, if not to the more public remedy appropriate to seditious libels. —*R.* v. *Cuthell*, 27 St. Tr., 665. The acts of responsible ministers and Magistrates may be criticised with fair argument; but it is defamation to hold them up to indiscriminating execration and contempt. It is moreover well ascertained law that he who publishes matter calculated to defame, must be presumed to have intended to defame, unless he shows the contrary; in other words, his malice is implied.—*R.* v. *Harvey*, 2 B. and C., 257.

Conduct of any person touching any public question.

Third Exception.—It is not defamation to express in good faith any opinion whatever respecting the conduct of any person touching any public question, and respecting his character, so far as his character appears in that conduct, and no farther.

Illustration.

It is not defamation in A to express in good faith any opinion whatever respecting Z's conduct in petitioning Government on a public question, in signing a requisition for a meeting on a public question, in presiding or attending at such a meeting, in forming or joining any society which invites the public support, in voting or canvassing for a particular candidate for any situation in the efficient discharge of the duties of which the public is interested.

Paterson remarks that not only is the right of comment applicable to all kinds of public officials, high and low, but there are also great

numbers of private persons carrying on businesses and pursuing occupations who openly invite and challenge this public comment. Thus persons selling goods in shops, though usually avoiding publicity on a large scale, sometimes go out of their way to attract public notice by advertisements magnifying the value of their wares. In one case a marine store-dealer issued a handbill stating the prices he gave for kitchen stuff of various kinds. A daily newspaper, in commenting on the handbill, treated it as of a nature to encourage servants to rob their masters; but there was no imputation on the personal honesty or integrity of the individual shopkeeper. This was held not only legitimate but salutary criticism, not exceeding the limits of discussing such matters as challenge the attention of the public.—*Paris* v. *Levy*, 9 C. B., N. S., 362. And where comments were made on a published correspondence relative to the abuse of a parish church by the incumbent allowing books to be sold during divine service and allowing cooking operations in the vestry room, this was deemed fair subject for reprehending the incumbent's conduct—*Kelly* v. *Tinling*, L. R., 1 Q. B., 699.

Publication of reports of proceedings of Courts of Justice.

Fourth Exception.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice, or of the result of any such proceedings.

Daily reports of a trial occupying many days may be published, provided comments and all remarks tending to partisanship are avoided. It is now established that a correct and fair report of *ex parte* proceedings is as lawful and unexceptionable as of final judgments in any Court—*Wason* v. *Walter*, 8 B. and S., 730. The report of a proceeding in a Court of Justice must be a fair and authentic report of what has happened. If it is mixed up with comments, shewing an *animus* against a party, and giving an unfair impression, it is not privileged *R.* v. *Fleet*, 1 B. and Ald., 379. And it is still less so, if the comment involves some new fact—*Cooper* v. *Lawson*, 8 A. and E., 746. A sensational heading to a report has been deemed to be a comment—*Lewis* v. *Clement*, 3 B. and Ald., 702. A party is not justified in publishing without discrimination everything that falls from the mouth of counsel—*Saunders* v. *Mills*, 6 Bing., 213.

"Any person who shall publish any account of any trial for rape, adultery, offences against decency, &c., containing any indecent or wanton details, shall be fined not exceeding 200 dollars *and* imprisoned not exceeding sixty days, *if the account be substantially true*: but if it be false, the punishment shall be doubled."—Lou. C. P. C., 513.

Louisiana Penal Code, 151, 152, enacts that, "If anyone during the pendency of a civil suit or criminal prosecution shall publish or print any argument, statement or observations relating thereto, of such a nature as to influence the verdict of a jury, or to excite any public prejudice, for or against either of the parties, he shall be imprisoned not exceeding 30 days, or fined not exceeding 200 dollars. But this does not prohibit the publication of a true statement of any judicial proceeding, or of the examination of witnesses, subject to the exceptions contained in the Procedure Code in cases affecting

decency and morals." Inasmuch as legal proceedings often include details of evidence which are indecent or blasphemous, the publisher is bound at his peril to abstain from publishing these, as they cannot in any view benefit society; and however accurate his account may be, he will, according to circumstances, be as much liable for the indecency and blasphemy as if he himself invented it. A publisher or reporter is bound to know that no privilege or immunity will protect him in such cases—*R.* v. *Carlile*, 3 B. and Ald., 167.

Explanation.—A Justice of the Peace or other officer holding an enquiry in open Court preliminary to a trial in a Court of Justice is a Court within the meaning of the above section.

Fifth Exception.—It is not defamation to express in good faith any opinion whatever respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent in any such case, or respecting the character of such person, as far as his character appears in that conduct, and no farther.

Merits of a case decided in a Court of Justice, or conduct of witnesses and others concerned therein.

Illustrations.

(*a.*) A says—"I think Z's evidence on that trial is so contradictory that he must be stupid or dishonest." A is within this Exception if he says this in good faith, inasmuch as the opinion which he expresses respects Z's character as it appears in Z's conduct as a witness, and no farther.

(*b.*) But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity." A is not within this Exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's conduct as a witness.

"Any case which has been decided." Paterson (Lib. Speech) says: "The first requisite of a Court of Justice is that its machinery be left undisturbed; and this cannot be effected unless comments be all but excluded till the Court has discharged its function." The power to commit summarily for contempt all persons who intrude into the judicial function, and profess to have better and superior means of knowledge, or who suggest partial or corrupt conduct, is inherent in all Courts of record; and it is a *necessary incident* to every Court of Justice, *whether of record or not*, to fine and imprison for a contempt *acted in the face of it.*—1 Vent., 1. If the course of justice is obstructed, that obstruction must be violently removed. That the Judges should be credited with impartiality is absolutely necessary—*R.* v. *Almon*, Wilmot, 270. Therefore to libel or slander the administration of the law by imputing misconduct to the Judge or jury is of itself an indictable offence—*Fuller's case*, 12 Rep., 42; *R.* v. *Lord G. Gordon*, 22 St. Tr., 175; *R.* v. *Hart*, 30 St. Tr., 1131. When a case has been decided, the result may be freely commented upon. But if the writer profess to have facts and knowledge of his own, then he must take the risk of their amounting to an imputation of libel—*Woodyate* v. *Ridout*, 4 F. and F., 216.

Sixth Exception.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has submitted to the judgment of the public, or respecting the character of the author so far as his character appears in such performance, and no farther.

Merits of a public performance.

Explanation.—A performance may be submitted to the judgment of the public expressly or by acts on the part of the author which imply such submission to the judgment of the public.

Illustrations.

(*a.*) A person who publishes a book submits that book to the judgment of the public

(*b.*) A person who makes a speech in public submits that speech to the judgment of the public.

(*c.*) An actor or singer who appears on a public stage submits his acting or singing to the judgment of the public.

(*d.*) A says of a book published by Z—"Z's book is foolish, Z must be a weak man. Z's book is indecent, Z must be a man of impure mind." A is within this Exception if he says this in good faith, inasmuch as the opinion which he expresses of Z, respects Z's character only so far as it appears in Z's book, and no farther.

(*e.*) But if A says—"I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine." A is not within this Exception, inasmuch as the opinion which he expresses of Z's character is an opinion not founded on Z's book.

A fair comment is a comment which is true, or which, if false, expresses the real opinion of its author, such opinion having been formed with a reasonable degree of care and on reasonable grounds. —Steph. Dig., 274.

To allow criticism on books, pictures, &c., tends to secure purity of taste and of morals, and a higher standard of knowledge and competency in all authors; and therefore a free handling by critics is always to be desired, and has a wholesome effect, by commending good workmanship on the one hand, and chastising dunces on the other hand for venturing to deal with matters for which they are unfitted—*Tabart* v. *Tipper*, 1 Camp., 351; *Carr* v. *Hood*, 1 Camp., 358. Some Judges draw the line at personal ridicule, and say that this is an abuse, and not to be permitted. Others think that ridicule is only another name for fair criticism. Much must depend on the degree and on the surrounding circumstances. If the criticism be irrelevant, the jury may infer an intention to injure the author rather than a fair discharge of his own special business—*Macleod* v. *Wakley*, 3 C. and P., 313; *Campbell* v. *Spottiswoode*, 3 B. and S., 769; *Stuart* v. *Lovell*, 2 Stark., 97. The mere honest belief in the writer that he is doing a just and spirited thing is no defence, and does not preclude a remedy to the victim of his attack. An author's character is more entitled to protection than the writer's display of his perverted talent and reckless invective before the eyes of anonymous readers. The reputation is a known, substantial, and clearly-defined

property; the right of free speech in such circumstances is somewhat shadowy at best, and its effects are unknown and unascertainable—*Hunter* v. *Walsh*, 4 F. and F., 1005. In the case of *Carr* v. *Hood*, above quoted, it was held that the critic must not travel into the domestic life to point his slanders.

"An injurious publication is presumed to have been malicious, if no justifiable motive for making it is shown."—N. Y. P. C., 311.

But there is no such presumption in the case of fair and true reports of judicial, legislative, or other public official proceedings.

It had been held and acted on for a century that the proprietor of a newspaper is answerable criminally as well as civilly for the acts or misconduct of his servants or agents in conducting such newspaper. Now, by 6 and 7 Vict., c. 96, s. 7, whenever on trial of an indictment or information a presumptive case against the defendant is made out owing to a publication through another person by his authority, the defendant may prove that such publication was made without his authority, consent, or knowledge, and not from any want of due care or caution on his part. But the rule has only been modified for criminal cases: the liability remains the same in civil actions.

Censure passed in good faith by a person having lawful authority over another.

Seventh Exception.—It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.

A Judge censuring in good faith the conduct of a witness, or of an officer of the Court; a head of a department censuring in good faith those who are under his orders; a parent censuring in good faith a child in the presence of other children; a schoolmaster, whose authority is derived from a parent, censuring in good faith a pupil in the presence of other pupils; a master censuring a servant in good faith for remissness in service; a banker censuring in good faith the cashier of his bank for the conduct of such cashier as such cashier—are within this Exception.

Accusation preferred in good faith to a duly authorized person.

Eighth Exception.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person with respect to the subject-matter of accusation.

Illustration.

If A in good faith accuses Z before a Magistrate; if A in good faith complains of the conduct of Z, a servant, to Z's master; if A in good faith complains of the conduct of Z, a child, to Z's father—A is within this Exception.

Ninth Exception.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Imputation made in good faith by a person for the protection of his interests.

Illustrations.

(*a.*) A, a shopkeeper, says to B. who manages his business—"Sell nothing to Z unless he pays you ready-money, for I have no opinion of his honesty." A is within the Exception, if he has made this imputation on Z in good faith for the protection of his own interests.

(*b.*) A, a Magistrate, in making a report to his superior officer, casts an imputation on the character of Z. Here. if the imputation is made in good faith, and for the public good, A is within the Exception.

In *McDougall* v. *Christie* (1 Camp., 267) Lord Ellenborough said: "The communications of business are not to be beset with actions of slander." But the delicate business of giving a servant's character must be done with care, and all the consideration towards the servant which due regard to the primary object admits of. A son-in-law may warn his step-mother, a widow, as to the character of a suitor of hers.—*Todd* v. *Hawkins*, 2 M. and Rob., 21. It has been held that a clergyman has no such close interest in the morals of his parishioners as to justify him in publishing a circular warning them against sending their children to the school of G, a parishioner, because, in the opinion of such clergyman, G had committed some infringement of the precepts of Scripture.—*Gilpin* v. *Fowler*, 9 Exch., 615. The proper function of a priest, or minister of religion of any sect, is to deal with vice or misconduct in an impersonal manner, and therefore he has no privilege while in the pulpit or out of it, and is amenable to an action, if he slander or libel any individual in the course of his sermon, address, or circular. He may visit and remonstrate privately with any of his flock, but he exceeds his duty when he takes on himself to put the finger of scorn and denunciation on any individual.

Paterson remarks that privileged occasions must not be abused to cloak malice. While the law excuses a man for preferring his own interest to that of his neighbour, it exacts a strict account of any excessive or reckless disregard of that neighbour's rights, even though selfish purposes are justly deemed superior. Malice and spite are to be distinguished from a sober, rational, and steady regard to one's private interests; and whenever it can be seen that this selfish object was not solely and reasonably kept in view, but spite and malice were mixed up with it, then the privilege is lost and the libel remains without excuse. The ruling of Sir Comer Petheram in *Laidman* v. *Hearsey* (I. L. R., 7 All., 906) appears to be quite indefensible, and has been condemned by laymen and lawyers alike. Defendant had sent a letter to complainant's official superiors, stating that complainant had, on a certain date, made use of certain abusive expressions to certain persons in his Court. The charge was shown to be utterly false, and it was proved that defendant was actuated by the meanest motives of malice and spite. Complainant was asked if he had ever made use of abusive expressions during the whole course of his official career, and Petheram, C. J., permitted evidence to be given on the point, saying he

had to see what sort of a character it was that was alleged to have been defamed. Defendant was acquitted, though it was shown that he had acted from malice and not in good faith. If this ruling be correct, a man might defame another by saying he had committed theft on a specific occasion (giving circumstances and dates) and then get off by showing that the person defamed had once committed theft twenty years before.

Tenth Exception.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to whom it is conveyed or for the public good.

Caution intended for the good of the person to whom it is conveyed or for the public good.

500. Whoever defames another shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

Punishment for defamation.

In England, the 7th section of the Libel Act (6 and 7 Vict., c. 76) requires evidence that the prisoners published the libels, and not merely the papers in which they were contained. In the case of *Reg.* v. *Ramsay* (15 Cox, C. C., 231) it was held, that evidence that one of the prisoners published the paper was a sufficient *primâ facie* case as against him, without any express evidence that he knew of the libels. But express evidence as to the other, that he was editor, held not sufficient, without evidence that he directed the insertion of the libel. The copy of a newspaper is admissible as evidence of a speech made at a meeting.—*Reg.* v. *Cork*, 15 Cox, C. C., 149.

In India, informers are often regarded with suspicion, and there is a sort of irony in the term "Sirkarikhair-kwah," which renders it no more desirable an epithet than "goinda." Some officers would even go so far as to abolish the practice of giving rewards in excise cases. In this regard art. 23 of the Louisiana Criminal Procedure Code is somewhat instructive. "When laws are just, whoever contributes to their execution renders an acceptable and an honourable service to his country, and he ought no more to be reproached for receiving a recompense for the trouble of denouncing an offender than for taking a salary for any other public service; therefore, to repress the effects of a vulgar and injurious prejudice, it is declared to be an offence for anyone in writing or in any other way in which defamation may be committed, to use reproachful or insulting words against any person, &c. . . . for having given information against any offender, or for having received the recompense granted by law."

"Though the liberty of the press is in everybody's mouth, I am afraid there is nothing less understood than the nature of that liberty. It is by most people taken for a liberty to publish every indecency of any kind against the most respectable persons and the highest characters; and so strongly does this notion prevail, that a libeller is no sooner prosecuted than a cry is immediately set up that

the liberty of the press is endangered. *But if the liberty of the press consists in defamation, it were much better we were without any such liberty.* The laws and institutions of England know of no liberty peculiar to the press of publishing to the world any defamatory matter to the prejudice of superior, inferior, or equal. That would be a liberty destructive of all laws and all constitutions. The liberty of the press is the liberty to communicate at an easy expense one's labours and thoughts upon any subject to the whole world; but it can never be understood as any liberty which the press acquired and which was unknown before the discovery of printing." Lord Hardwicke, L. C., 10 Parl. Hist., 1330. These sound and sensible remarks are worthy of the attention of newspaper editors in India.

Printing or engraving matter known to be defamatory.

501. Whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

In England, a Statute of 1819 required that a recognizance of £300 with sureties should be entered into by publishers of newspapers. The object of this recognizance was to provide a fund for securing payment of fines that might be imposed on convictions for libel. In 1830, the amount was raised to £400 in order to provide for the damages that might be found by juries in actions for libel (11 Geo. IV & 1 Will. IV, c. 73). These enactments were not repealed till 1869. Is India in 1886 as advanced and civilized as England was in 1869? If not, some such provisions as the above might well be put in force.

Sale of printed or engraved substance containing defamatory matter.

502. Whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

Criminal intimidation.

503. Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any

act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested is within this section.

Illustration.

A, for the purpose of inducing B to desist from prosecuting a civil suit, threatens to burn B's house. A is guilty of criminal intimidation.

Intentional insult with intent to provoke a breach of the peace.

504. Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Where a tract distributor followed two Roman Catholic clergymen in the public street, and handed them a bill, inviting them to a discussion on religious matters, and persisted in holding up the bill after he had been informed they were Roman Catholic priests,—it was held that such conduct was making use of threatening, abusive or insulting language or behaviour, which might provoke a breach of the peace.—*Reg.* v. *King*, 14 Cox, C. C., 434.

In some cases the intention to insult or otherwise must be inferred from circumstances. Behaviour, not illegal in itself, may amount to an intentional insult; for instance, to pay a visit of ceremony and enter the house with shoes on. A, a Brahman who has been fined by B, a Deputy Magistrate, makes a point of meeting B frequently, when B goes for his morning ride. A stands in the road so as almost to touch B's horse, and stares insolently at B, as he passes. This is an offence under s. 504. A very peculiar case occurred at Midnapore. On the occasion of a certain festival, the inhabitants of two different quarters of the town take it in turns in alternate years to go in procession through the other quarter. On one occasion a *dhenki* was carried in a cart with a boy working it. A *dhenki* is an instrument for husking paddy, and the word also has an indecent sense (pounding or grinding). The representation meant that the processionists had dishonoured the females of the quarter through which the procession was passing. This act amounted to an offence under ss. 500, 504, and 509 of the Penal Code.

The fourth clause of s. 173 of the Chinese Penal Code enacts that any person shall be punishable with 50 blows who does not make way when he meets a civil or military officer of Government on the public road, or who, if on horseback, does not dismount on such an occasion. Such legislation is not out of place in an Eastern country, where ideas of equality are so repugnant to the upper castes.

Abusive epithets may amount to intentional insult. *Held*, in Alabama, that the words "If you don't give up my pistol, I'll knock

your brains out, by God," are in violation of Ala. Code, s. 4203, against the use of "abusive, vulgar, or insulting language." 68 Ala., 513.

Quære.—Is a challenge to fight punishable under this or any other section of the Penal Code? It is a misdemeanour by the English common law.—*R.* v. *Rice*, 3 East, 581. The challenge may be verbal or written, or the invitation conveyed by circulating papers or libellous prints.—*R.* v. *Hicks*, Hob., 215, &c. Where a letter containing a challenge has once been posted, the offence is committed whether the letter reach the party intended to be challenged or not.—*R.* v. *Williams*, 2 Camp., 506. An attempt to provoke a challenge is also treated as a crime. In 1803, a Lieutenant in the Navy, who challenged his superior officer, was fined £100, imprisoned for one month, and ordered to give surety to keep the peace for three years.—*R.* v. *Rice*, 3 East, 581. The Star Chamber once fined a person £10,000 for sending a challenge, Laud saying that the practice was against the law of all nations.—Burn, Star Ch., 133.

505. Whoever circulates or publishes any statement, rumour or report which he knows to be false, with intent to cause any officer, soldier or sailor in the Army or Navy of the Queen to mutiny, or with intent to cause fear or alarm to the public, and thereby to induce any person to commit an offence against the State or against the public tranquillity, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Circulating false report with intent to cause mutiny or an offence against the State, &c.

In China, conjurors and fortunetellers are not allowed to prophesy impending national calamities or successes; for such offence the punishment is 100 blows. But they may tell the fortunes and cast the nativities of individuals by the stars in the usual manner.—China P. C., 178.

506. Whoever commits the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Punishment for criminal intimidation.

And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or transportation or with imprisonment for a term which may extend to seven years, or to impute unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.

If threat be to cause death or grievous hurt, &c.

Intimidation and molestation in business have been familiar to the English Legislature for centuries, and have lately become very important, owing to the discussions arising out of the complicated interests of labour and capital. But the ancient law as to freedom of trade, and that all restraints on trade are odious, was rather comical in its actual working. The statutes of labourers directly conflicted with such principles, as their main object was to fix wages and prices, and even punished those who engaged for other wages and prices. Thus the Courts and the Legislature for a long time were confused by two irreconcilable principles—freedom of trade on the one hand, and on the other hand, the restriction on trade caused by fixed wages. As late as the year 1800, it was still deemed an indictable offence—at common law—for a hop merchant to buy up most of the hops in the market in order to enhance the price, and one who did so was fined £1,000, and imprisoned.—*R.* v. *Waddington*, 1 East, 143. Such a punishment would probably be in accord with the public opinion of natives in India, who think banias deserve punishment for buying up and hoarding grain and then raising prices in times of scarcity. It was not till 1844 that punishments for engrossment were repealed in England (7 and 8 Vict., c. 24).

Again, trade unions cannot interfere with the liberty of workmen. Combinations of workmen used to be punishable by many Statutes, which were repealed in 1825. By 6 Geo. IV., c. 129 (repealed and re-enacted in other words in 1871 and again in 1875), it was enacted that while workmen and masters were generally allowed to meet, confer, agree, and settle as to wages, hours, and prices, all persons should be liable to imprisonment for three months, if by *violence, threats, intimidation or molestation* they forced *or endeavoured to force* a workman to depart from his hiring, to refuse work, to become a member of a club, or to comply with rules made as to wages; and the same if they forced a master to alter his trade or business, or to limit his workmen and servants. But trade unions may use all means of fair argument, discussion, and expostulation. Moreover, it is now legal for many workmen simultaneously to leave their work. The common law has been altered only with regard to trade disputes, and the Statute (38 and 39 Vict., c. 86, s. 3) enacts that an agreement or combination by two or more persons to do or procure to be done any act in contemplation or furtherance of a trade dispute between employers and workmen shall not be indictable as a conspiracy, if such act committed by one person would not be punishable as a crime. But there are some exceptions to the unlimited right to strike, which is not permitted when the work is the supply of gas or water to a town or district, and the breach of contract will endanger human life, or cause serious bodily injury, or expose valuable property to destruction or to serious injury (*ib.*, ss. 4, 5). Such cases would be covered by ss. 268, 283, Penal Code. Under Indian Municipal Law, conservancy sweepers have to give notice before they can retire from their duties.

The threats may be written or verbal. By the English statute, it is sufficient if the letter is indirectly sent, and it is immaterial whether it reaches the person or not, if once sent upon its errand. If a letter be put in such a place that it is likely to be handed by a servant or other person to the person intended to be threatened, that is sufficient.—*R.* v. *Wagstaff*, R. and R., C. C., 398; 2 East, P. C., 1115, 1120. The fact of other letters of a threatening kind having been sent

before or afterwards, or any declaration afterwards having been made to that effect, is admissible to show the intent or explain the meaning.—2 Leach, 749. A mere threat to sue for penalties is not deemed serious enough to disturb a firm mind.—*R.* v. *Foutherton*, 6 East, 126.

Criminal intimidation by an anonymous communication.

507. Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.

Act caused by inducing a person to believe that he will be rendered an object of the Divine displeasure.

508. Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do, or to omit to do anything which he is legally entitled to do, by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do, or if he does the thing which it is the object of the offender to cause him to omit, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

Illustrations.

(*a.*) A sits dhurna at Z's door with the intention of causing it to be believed that, by so sitting, he renders Z an object of Divine displeasure. A has committed the offence defined in this section.

(*b.*) A threatens Z that, unless Z performs a certain act, A will kill one of A's own children, under such circumstances that the killing would be believed to render Z an object of Divine displeasure. A has committed the offence defined in this section.

This is the only section of the Penal Code in which the Legislature have at all recognized the existence of any such thing as witchcraft, though it is firmly believed in many parts of Bengal and throughout Orissa. People believe that their enemies can in some cases kill them or their children, or bring illness or disease on them by making images of earth and burning them over a fire. Sometimes a *Hari* or *Chemar* midwife or a nurse gains an evil reputation as having killed or harmed children by her witchcraft or sorcery. Such women are called *Dains* or *Kancha Dances*. This is the name also applied to the moving light which we call Will-o'-the Wisp. I have had a petition under s. 499 presented by a woman who said no one would employ her because her former master or mistress had given out in

the village that she was a *Dain* (witch). In England, witchcraft was punished as an offence up to 1736. In that year an Act was passed repealing the former law, but the repealing Act contains a section still in force for the punishment of persons "pretending to exercise or use any kind of witchcraft, sorcery, enchantment, or conjuration," or to discover stolen or lost property by "any occult or crafty science."

509. Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

Word or gesture intended to insult the modesty of a woman.

The singing of obscene songs is punishable under s. 294, P. C. Bengalees, whose solicitations have been refused by a woman, often persecute her in a hundred despicable ways. Singing songs or uttering words with intent to insult would come under this section, whether the words be obscene or not. But suppose the not uncommon case of placing excrement on her door-step, or flinging a cow-bone over the wall into her *angun* (yard), neither of these acts amount to "exhibiting any object." "Intending that such object shall be seen" clearly means that the object should be seen at the time it is "exhibited." Suppose, then, a man is seen while he is surreptitiously placing a cow-bone on a woman's verandah at night. Under what section is the act punishable? The verandah abuts on the road, so that there need be no criminal trespass. The bone can hardly be said to damage the verandah, and the situation of the bone is changed, not that of the verandah. Suppose the woman comes out and unintentionally treads on the bone, would the placing of the bone amount to criminal force? Has the man caused to the substance (the bone) *such motion as brings it* into contact with the woman's foot. Apparently not: the contact being a mere chance. Moreover, the bone has not been disposed in such a manner that the contact takes place without any further act on the woman's part [s. 349 (2)]. Section 298, P. C., does not apply, as there are many things which would not wound *religious* feelings, though intended as an insult or to cause annoyance. Is the Penal Code, then, not comprehensive enough to punish such an act?

A man may bathe in an indecent manner in close proximity to a woman's *ghât* in order to insult or annoy some particular woman. The intent may make the act an offence. But a mere wanton exposure of person, or an exposure with intent to excite passion, does not appear to be punishable under the Indian law, unless the "causing of some common annoyance" could be proved.

In England the following notice is generally posted up at public places frequented by bathers:—"All persons are cautioned against bathing in an indecent manner near a public highway, or near inhabited houses from which they can be seen. The police have directions to enforce the law to prevent such offences (2 & 3 Vict., c. 47, s. 54, cls. 12 and 13), and, if necessary, to apprehend the offenders, and charge them before a Magistrate."

510. Whoever, in a state of intoxication, appears in any public place or in any place which it is a trespass in him to enter, and there conducts himself in such a manner as to cause annoyance to any person, shall be punished with simple imprisonment for a term which may extend to twenty-four hours, or with fine which may extend to ten rupees; or with both.

Misconduct in public by a drunken person.

There is no power to arrest under this section, but, if name and address be not given, an arrest may be made under s. 57 of the Procedure Code. In England mere drunkenness in any highway or other public place, whether a building or not, or on any licensed premises, is punishable; but no arrest is to be made, unless name and address be unknown to the constable, or unless the person is incapable of taking care of himself.

Every person who is guilty, while drunk, of riotous or disorderly behaviour, or who is drunk while in charge on any highway, &c., of any carriage, horse, cattle, or steam engine, or who is drunk when in possession of loaded firearms, *may be apprehended*, and shall be liable to a penalty of 40s., or to one month's imprisonment. See Act V, 1861, s. 34, for the Indian law.

CHAPTER XXIII.

OF ATTEMPT TO COMMIT OFFENCE.

511. Whoever attempts to commit an offence punishable by this Code with transportation or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with transportation or imprisonment of any description provided for the offence, for a term of transportation or imprisonment which may extend to one-half of the longest term provided for that offence, or with such fine as is provided for the offence, or with both.

Punishment for attempting to commit offences punishable with transportation or imprisonment.

Illustrations.

(*a.*) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(*b.*) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section.

In England, attempts are punishable (14 and 15 Vict., c. 100, ss. 9, 12). In Scotland, only attempts to commit the *graviora delicta*, as murder, rape, fire-raising, &c., are punishable.

But there are many crimes called innominate offences which are punishable as crimes, though no statute has ever declared them to be so, the Court of Justiciary assuming an inherent power at common law to punish new forms of crime as they arise.—Hume, 358, 436; Alison, Pract., 624.

The definition of attempt in the Indian Code is wider than that in the English law (14 and 15 Vict., c. 100, s. 9). Yet, in the case reported at 8 C. L. R., 572, the Calcutta High Court appear to have narrowed even the English rulings. An attempt to commit a felony can only be made out where, if no interruption had taken place, the felony itself *could* have been effected.—*R.* v. *Collins*, 9 Cox, C. C, 497. *Every step towards* a misdemeanour constitutes an attempt.—*R.* v. *Chapman*, 2 C. and K., 846.

It was held by the Supreme Court of the United States in the case of *U. S.* v. *Quincy*, that to attempt to do an act does not, either in law or in common parlance, imply a completion of the act, or any definite progress towards it. Any effort or endeavour to effect it will satisfy the terms of the law.—6 Pet., 445.

Held, in America, that a man could not be convicted of the offence of attempting to introduce spirituous liquors into Alaska upon proof that he ordered the liquor of a San Francisco dealer with intent to introduce it, and nothing more.

In Germany, an attempt is not punished, when its author (1) has abandoned the execution of the contemplated act without having been prevented by circumstances independent of his own will; or (2) before the discovery of the act, has averted by his own act the effect which constitutes the consummation of the crime or delict.—G. P. C., 46.

Under the French Penal Code, an attempt, which is manifested by *a commencement of execution, which is only suspended or fails in its effect owing to circumstances independent of the will of its author*, is regarded as the crime itself. Attempts to commit delicts are not punishable, except when specially provided.—*Cf.* Belg. P. C., 51, 52.

An attempt to commit a crime is an act done with intent to commit that crime, and forming part of a series of acts which would constitute its actual commission if it were not interrupted (Steph. Digest). The following examples are given :—A procures dies for the purpose of coining bad money. A has attempted to coin bad money.—*Roberts' Case*, Dearsly, C. C., 539.

A kneels down in front of a stack of corn, and lights a lucifer match, intending to set the stack on fire; but observing that he is watched, blows it out. A has attempted to set fire to the stack.—*Cf.* 3 B. L. R., A. Cr., 55.

A, by false pretences as to the number of loaves he had delivered under a contract, obtains credit in account for the loaves, and would have been paid for them but for the discovery of the fraud. This is an attempt to obtain money by false pretences, as it was the last step depending on the defendant towards obtaining it.

The definition in the Indian Code is wide, and certain High Court rulings (narrower and stricter than the English rulings) are quite indefensible. The ruling in 3 W. R., Cr., 59, goes too far, while that in 8 C. L. R., 572, does not go far enough. In the latter case a ryot got some of his zemindar's rent receipt forms printed with intent to fill them up and use them as genuine. Such an act constitutes abetment as well as an attempt. See I. L. R., 3 Mad., 1.

APPENDIX.

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Section 2, Indian Penal Code (1).

Territorial Jurisdiction, &c.

"Within the said territories."—Some Codes specify the cases in which a man is liable for acts committed in a foreign country. They are generally treason, sedition, violence towards a member of the royal family, counterfeiting or altering coin, notes or stamps of his own country, offences committed on ships of his own country, wherever they may be.—Dutch P. C., 3, 4, 5; Den. P. C., 5; Hung. P. C., 7; Germ. P. C., 4. A man who alters his nationality after the offence remains liable. The Dutch and German Codes include all offences which are offences in Holland or Germany, and also offences in the country where the act is committed.

Halleck gives the following examples of cases in which the local jurisdiction prevails over a foreign ship of war: (1) *Neutrality.* A neutral State may enforce neutrality within its waters: Alabama case. (2) *Prize.* If a foreign ship of war brings illegal prize into a neutral port, such prize may be arrested and restored to its proper owner by the Admiralty Court. *Santissima Trinidad*, 7 Wheat. R., 283; also British and Foreign Enlistment Act, 33 and 34 Vict., c. 90, s. 14; (3) *Foreign Enlistment Act.* Officers of foreign ships of war appear to be liable to British tribunals for breaches of the British Foreign Enlistment Act, and punishable by fine and imprisonment. (See ss. 6, 7, 11, 24); (4) *Smuggling.* Foreign ships of war are not permitted to pursue or capture smugglers in territorial waters, and if need arises, are prevented doing so by force. The territorial authority is thus constantly maintained with more or less display of force by the fortress of Gibraltar against Spanish *garda costas*; (5) *Quarantine.* Foreign ships of war are bound to observe the local laws of quarantine; they are liable to the customs laws, to be searched by the customs officers, who may remove goods, &c. (16 and 17 Vict., c. 107, s. 52, Customs Consolidation Act, 1853); (6) *Anchorage.* Commanders of foreign ships of war are bound to comply with all regulations of the port; (7) *Salvage.* In the case of salvage, collision, &c., it is doubtful whether foreign ships of war are liable to be arrested; (8) *Arrest on shore.* The right of municipal authorities to arrest on shore and punish officers or men belonging to foreign ships of war, for acts committed on shore, is universally admitted and not seldom acted upon.

As to ambassadors, Wheaton states that their persons and papers may be seized, and they may be sent out of the country, if they commit offences affecting the existence and safety of the State, and the danger is urgent. In all other cases, it appears to be the established usage of nations to request their recall by their own sovereign,

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(1) These notes should be read with the notes which have been printed under the text of the Penal Code.

which, if unreasonably refused by him, would unquestionably authorize the offended State to send away the offender. In 1584, De Mendoza, the Spanish Ambassador in England, was ordered to quit the realm for conspiring to introduce foreign troops and dethrone Queen Elizabeth. In 1654, De Bass, the French Minister, was ordered to depart the country in 24 hours, on a charge of conspiracy against the life of Cromwell. In 1717, Gyllenborg, the Swedish Ambassador, was arrested. So recently as 1848, Sir H. Bulwer, the British Ambassador in Spain, was requested by the Spanish Government to leave Spain. The wife and family, servants and suite of the Minister, participate in the inviolability attached to his public character. In respect to criminal offences committed by his domestics, although in strictness the Minister has a right to try and punish them, the modern usage merely authorizes him to arrest and send them for trial to their own country. He may also, in the exercise of his discretion, discharge them from his service, or deliver them up for trial under the laws of the State where he resides; as he may renounce any other privilege to which he is entitled by the public law.—Wheaton, 285 *seqq.*

The privilege of exterritoriality extends to sovereigns resident or travelling in other countries than those over which they reign. But the privilege does not extend to sovereigns who have abdicated. The privilege also extends to public vessels, military forces when permitted to pass through the territory of another State, and the subjects of Western States domiciled in certain Eastern countries. Kent Int. Law, 202. Pitt Cobbett, Leading Cases, 50. Wheaton, 128 *seqq.* As to vessels, there is, of course, a distinction between public and private ships. "It may be laid down," said Mr. Justice Story, "that all persons and property within the territorial jurisdiction of a sovereign are amenable to the jurisdiction of himself or his courts; and that the exceptions to this rule are such only as by common usage and public policy, have been allowed in order to preserve the peace and harmony of nations, and to regulate their intercourse in a manner best suited to their dignity and rights." *The Santissima Trinidad*, 7 Wheaton, 353. But the maritime jurisprudence of France varies to a certain extent the local jurisdiction in favour of foreign private vessels entering French ports. The French tribunals decline taking jurisdiction in the case of offences committed by a person forming part of the ship's officers and crew against another person belonging to the same, whereby the peace of the port is not disturbed. But they exercise jurisdiction, if the offences are committed by or against other persons, or if the peace of the port is disturbed. The principle is that the territorial jurisdiction should not be waived, where the interests of the State are affected. Even the rule of exemption of public ships is not absolute. Lord Chief Justice Cockburn, after reviewing all the authorities, arrived at the following conclusion: "As regards the discipline of a foreign ship of war, and offences committed on board, as between members of her crew towards one another, matters should be left entirely to the law of the ship, and should the offender escape to the shore, he should, if taken, be given up to the commander of the ship on demand, and should be tried on shore only if no such demand be made. But if a crime be committed on board the ship upon a local subject, or if, a crime having been committed on shore, the criminal gets on board a foreign ship, he should be given up to the local authorities." Report of Royal Commission on Fugitive Slaves, 1876, pp. 37, 43.

Both the public and private vessels of every nation, on the high seas, and out of the territorial limits of any other State, are subject to the jurisdiction of the State to which they belong.—*R.* v. *Anderson*, L. R., 1. C. C. R., 161. This jurisdiction of a nation is exclusive only *quoad* offences against its own municipal laws. Piracy and other offences against the law of nations, being crimes against all mankind, may be punished in the competent tribunal of any country where the offender may be found, or into which he may be carried, although committed on board a foreign vessel on the high seas. —Wheaton, 144.

Does the judicial power of an independent State extend to the punishment of offences by its subjects, *wheresoever committed?* The affirmative is the doctrine fully confirmed by the international usage and constant legislation of the different States of the European Continent. But this doctrine is an exception in Great Britain and the United States. Fœlix, *Droit international privé*, 510—532 ; American Jurist, xxii, 391—386. The cases in which English Courts have jurisdiction to try offences committed abroad, are exceptions to the general rule that criminal offences are justiciable only by the Courts of that country where the offence is committed. The following are the principal exceptions : political offences, such as treason, administering unlawful oaths, and forging Government documents. 52 Geo. III, c. 104, s. 7. As these acts must necessarily be intended to take effect in the country against which they are devised, they may perhaps not be looked upon as a real exception. But homicide abroad is an undoubted exception. A British subject, who commits murder or manslaughter abroad on land, whether within the Queen's dominions or without, and whether he kills a British subject or not, can be tried in England or Ireland, wherever he may be apprehended. This is not to prevent his being tried elsewhere.—24 and 25 Vict., c. 100, s 9. Offences against property or person committed at any place, ashore or afloat, out of Her Majesty's dominions, by any master, seaman, or apprentice, who, at the time when the offence is committed, or within three months previously, has been employed in any British ship, may be tried in England. 17 and 18 Vict., c. 104, s. 267. See also Foreign Jurisdiction Acts 1843 to 1878, 6 and 7 Vict., c. 94, and 41 and 42 Vict., c. 67. 30 and 31 Vict., c. 124 (the Merchant Shipping Act, 1867). s. 11, gives jurisdiction to try offences by British subjects on board ships. Certain bonds were stolen from a British ocean-going merchant ship whilst she was lying afloat, in the ordinary course of her trading, on the river at Rotterdam, in Holland, moored to the quay, and were afterwards dishonestly received by the prisoners in England : *Held*, that the larceny took place within the jurisdiction of the Admiralty of England.—*R.* v. *Carr*, 10 Q. B. D., 76. The criminal jurisdiction of the Admiralty of England extends over British ships, not only on the high seas, but also in rivers, below the bridges, where the tide ebbs and flows, and where great ships go, though at a spot where the municipal authorities of a foreign country might exercise concurrent jurisdiction, if invoked.—*R.* v. *Anderson*, 11 Cox, C. C., 198. An English ship upon the high seas is to be considered as part of the territory of England ; therefore a foreigner, who, whilst on board such ship, commits an offence against the English laws, is amenable to those laws.—*R.* v. *Lopez*, 7 Cox, C. C., 431.

A German vessel, under command of a German subject, collided with an English steamer at a point within 2½ miles from Dover

Beach, whereby the English ship was sunk, and an English subject on board of her was drowned. The prisoner was tried and found guilty of manslaughter at the Central Criminal Court: *Held*, by the majority of the Court of Criminal Appeal, that the Central Criminal Court had no jurisdiction to try the case.—*R.* v. *Keyn*, *The Franconia*, 2 Ex. D., 63; 13 Cox, C. C., 403. But by the Territorial Waters Jurisdiction Act, 1878 (41 and 42 Vict., c. 73), s. 2, "an offence committed by a person, whether he is or is not a subject of Her Majesty, on the open sea, within the territorial waters of Her Majesty's dominions, is an offence within the jurisdiction of the Admiral, although it may have been committed on board or by means of a foreign ship; and the person who committed such offence may be arrested, tried, and punished accordingly. By s. 7, "Territorial Waters of Her Majesty's dominions" means any part of the open sea within one marine league of the coast, measured from low-water mark.

A foreigner was convicted of manslaughter at the Central Criminal Court, committed on board a British vessel, in the river Garonne, within the boundaries of the French empire, about 35 miles from the sea, and at a spot about 300 yards from the nearest shore, within the ebb and flow of the tide: *Held* right, inasmuch as it was a place within the jurisdiction of the Admiralty of England, which that Court had jurisdiction to try under 4 and 5 Will. IV, c. 36, s. 22. —*R.* v. *Anderson*, 11 Cox, C. C., 198. Larceny committed on board an English ship lying in a river in China is within the jurisdiction of the Central Criminal Court—*R.* v. *Allen*, 7 C. and P., 644. A British subject might be indicted at the Central Criminal Court under 9 Geo. IV, c. 31, s. 7, for the murder of a foreigner out of the Queen's dominions.—*R.* v. *Azzopardi*, 1. C. and K., 203.

As to ambassadors, it is laid down in the German Code of Judicial Organisation that the national tribunals have no civil or criminal jurisdiction over them. But if a German happens to be the diplomatic agent of a foreign power, he only enjoys the privilege of exterritoriality with the consent of his country of origin. The privilege accorded to ambassadors extends to the members of their family and offices, and to servants of the household, who are not Germans. Germ. C. O. J., 18, 19. But these rules do not affect the competence of civil tribunals as regards real property. Consuls are subject to the jurisdiction of the local tribunals, unless they are exempted by special treaty.—*ib.*, 20, 21. The New York Penal Code (27) exempts public ministers, with their secretaries, messengers, families, and servants, who are to be returned to their own country for trial and punishment.

Section 3.

Ex-Territoriality, &c.

As regards criminal jurisdiction, see Halleck, I., L., i. chap. vii. A State can punish the crimes of its own citizens under its own laws, if within their reach, no matter where the crime may have been committed. It may be stated in general terms that the judicial power of a State is co-extensive with its legislative power, but it does not embrace those cases in which the municipal claims of another nation operate within its territory, such as the cases of foreign ministers, or of a fleet or army coming within its territorial limits, by its permission, either express or implied. Even beyond the marine league from the coast a nation may exercise jurisdiction

for certain special purposes, as the execution and enforcement of its revenue laws, &c., and over its own public and private vessels on the high seas, and its public, and to a certain extent, its private vessels in foreign ports.—Halleck, i., 168.

When an Austrian commits a crime in a foreign land, he is nevertheless punished according to the prescriptions of the Austrian Penal Code; and when he has been already punished where the crime was committed, he receives, if that punishment was less than laid down in the laws of Austria, the additional punishment on his return. The crime of high treason, or of counterfeiting the obligations, bank notes, or coins of Austria, by a foreigner, receives the punishment laid down in the Code, even when committed in another country. Sec. 3 of the Colonial Courts Act (37 and 38 Vict., c. 27), enacts that "When by virtue of any Act of Parliament, now or hereafter to be passed, a person is tried in a Court of any colony (India is included by s. 2) for any crime or offence committed upon the high seas or elsewhere out of the territorial limits of such colony and of the local jurisdiction of such court, or if committed within such local jurisdiction, made punishable by such Act, such person shall, upon conviction, be liable to such punishment as might have been inflicted upon him if the crime or offence had been committed within the limits of such colony and of the local jurisdiction of the court, and to no other, anything in any Act to the contrary notwithstanding. But if the offence is not punishable by the law of the colony, the nearest equivalent to the punishment by English law shall be applied."

"Any person liable by any law passed by the Governor-General of India in Council." See the Extradition Act, XXI of 1879, and s. 188, C. P. C., which relate to offences committed by European British subjects in protected Native States in India, and by Native Indian subjects of Her Majesty at any place outside British India. But it seems that, under certain English statutes, persons may be liable for offences committed outside British India: (1) Territorial Waters Jurisdiction Act, 41 and 42 Vict., c. 73: (2) The Slave Trade Act, 39 and 40 Vict., c. 46, s. 1, makes the commission or abetment of offences under ss. 367—371 of the Indian Penal Code punishable in the same way as if committed in any place in British India, within which the offender may be found; (3) Admiralty Jurisdiction of Supreme Courts continued to the High Courts by 24 and 25 Vict., c. 105, s. 9, and by ss. 32 and 33 of the Letters Patent of 1865. The effect of 12 and 13 Vict., c. 69 and 23 and 24 Vict., c. 88, s. 1 is to confer this jurisdiction also on Mofussil Courts; (4) Merchant Shipping Acts, 17 and 18 Vict., c. 104, s. 267, 18 and 19 Vict., c. 91, s. 21, and 30 and 31 Vict., c. 124. In Admiralty cases the substantive law to be applied is apparently the English criminal law, see 33 Geo. III., c. 52, s. 156, and 7 Bom. H. C., 128; also 1 B. L. R., Orig. Cr., 1. The procedure is that of Indian law.

Section 4.

Liability of Government officers, &c.

"Every servant of the Queen."—As regards the criminal responsibility of the Governor of a colony or dependency for an act done by him while discharging the functions of his office, see 11 & 12 Will. III, c. 12. See also 42 Geo. III, c. 85, s. 1, which extends the provisions of the former Act to persons in public employment abroad.—*R.* v.

Shawe, 5 M. & S., 403; *R.* v. *Eyre*, L. R., 3 Q. B., 487. The most celebrated cases are those of General Picton, Governor Wall, and more recently, that of Governor Eyre, 30 St. Tr., 225; 28 St. Tr., 51; Finlason's Hist. of Jamaica case. Lord Campbell thought the conviction in Governor Wall's case (death was caused by the infliction of excessive corporal punishment) was very unjust.—*Chief Justices*, iii., 149. The Governor of a dependency may occasionally be compelled to resort to a proclamation of martial law, in which case there is a suspension of civil rights—*inter arma silent leges*, Co. Litt., 249. But such a course is only justified by paramount necessity—*per* Lord Mansfield—*R.* v. *Stratton and others*, 21 St. Tr., 1230. As to the term "Martial Law," see Steph. Hist. Cr. L., i., 207. As to liability for abuse of exceptional powers, see 27 St. Tr., 765. The bill against Governor Eyre was ignored by the grand jury. A Governor or other person entrusted with the duty of suppressing riot or rebellion is responsible for failure of duty as well as for excess. In the language of Littledale, J., such a person "is bound to hit the exact line between excess and failure of duty, and the difficulty of so doing, though it might be some ground for a lenient consideration of his conduct by the jury, is no legal defence."—*R.* v. *Penny*, 3 B. & Ad., 958; *Archibald Stewart's Case*, 18 St. Tr., 863; and *per* Holroyd, J., 2 Stark., N. P., 108. The Indian law is more liberal to Government officers. See Code of Criminal Procedure, Chap. IX. *Necessitas publica major est quam privata—privatum incommodum publico bono pensatur.*

Section 5.

Saving of other Laws.

This section saves, *inter alia*, the Army Act 1881, 44 & 45 Vict., c. 58.

Section 21.

Public Servants.

Any person, whether receiving pay or not, who chooses to take upon himself duties and responsibilities, belonging to the position of a public servant, and performs those duties, and accepts those responsibilities, and is recognized as filling the position of a public servant, must be regarded as one. If the test were to be receipt of salary, very great mischief and difficulty might arise in a country like this, where numerous persons are engaged in the performance of public duties without pay.—I. L. R., 8 All., 201. In the Government Offices in India men often work as unpaid apprentices for several years in the hope of getting an appointment on the occurrence of any vacancy in the office.

Section 34.

If one person enter an orchard to steal fruit, and another, who is watching, kill the orchard-keeper, the thief who is taking the fruit is not held art and part guilty, without proof that he concurred in the deed.—Hume, 270.

Section 39.

Under the Dutch Penal Code (75), an act is not a crime unless it has been committed voluntarily. But in the case of the following delicts intention is not a necessary element of the offence, namely, false evidence (221); celebration by a clergyman of a void or void-

able marriage (253, 257); homicide by negligence (290); serious bodily hurt caused by negligence (310); bankruptcy (416); arson and causing inundation (425 and 432); injury to railways, ships, or telegraphs (437, 440, and 445); want of vigilance on the part of directors and guardians of prisons (448); failure of army-contractors to perform contracts (457). In Germany, it would seem that there must be intention or knowledge in the case of crimes and delicts, but not in the case of contraventions.—P. C., 51, 360 *seqq.* As regards contraventions, the mere act is an offence, and proof of intention is not necessary. This has been specifically ruled by the Court of Cassation in Paris. See Bk. iv of French Penal Code: also notes under s. 268.

Section 40.

It has been remarked by Mr. Stokes that the definition of "offence" is still defective in not declaring that in certain sections (*e.g.*, 216, 221, 224, 225) 'offence' shall include acts or omissions punishable by the law of England; thus, if a British sailor committed a murder on the high seas, when he reached Madras, a public servant could not be charged under sec. 221 for omitting to apprehend him.

Section 53.

Punishments.

Feuerbach's theory of aggravating and extenuating circumstances was embodied in several of the Codes of the German States, for instance, Baden and Bavaria. The theory is also closely followed in the Penal Code of Austria. The punishment is enhanced in proportion as the reasons for committing the offence were more numerous and important; as the obstacles and dangers in the way of the execution were great; and as the external incentives to the offence were small or insignificant; as the offender by his previous manner of living had manifested immorality and perversity. The punishment is mitigated when the offender was not aware of the result of the act or the extent of the punishment of the same; when led to commit the offence either by necessity, persuasion, deceit, seduction, order, or menace; when he was in a state of great mental excitement; when he has led an irreproachable life; when under the influence of repentance, he has sought to hinder the injurious consequences of the punishable action; when he has himself given information of his offence to the authorities. The Austrian Code enumerates, among the circumstances which aggravate misdemeanours and contraventions, the setting a pernicious example to one's family, deceiving the Judge by false statements, the violation of public decency by a well-educated or "accomplished" person; and among extenuating circumstances, youth, weakness of intellect and neglected education, former good behaviour, seduction, right or false idea of dignity, violent excitement, extreme poverty, non consummation of the action, taking less advantage than might have been taken from the action, reparation, information, voluntary abstention from causing greater damage.

Section 53.

Banishment from Scotland and public whipping are still competent punishments in Scotland for certain crimes.—Macdon, 17.

Section 54.

In several modern Codes it is provided that the administrative authorities may conditionally release any prisoner, who has served three-fourths of his sentence.—Dutch P. C., 15; Hung. P. C., 48; Germ. P. C., 23.

Section 63.

Amount of Fine.

By English constitutional law dating back to Magna Charta fines are not to be excessive. The Roman Law declared that *mulcta immoderata et excessiva ipso jure nulla est.* By the Brazilian Penal Code the amount of fine depends on the offender's income. In China all offences can be redeemed in money as in the *Leges Barbarorum* of Germany.

As to powers of Magistrates, see s. 32, C. P. C. For Sessions Judges and High Courts there is no limit. Some Codes prescribe a minimum and maximum fine. In Hungary, they are one and 4000 florins respectively—P. C., 26. In Denmark, one and 2000 Rix dollars. The Dutch Code fixes a minimum of 50 cents or about a franc, but no maximum—P. C., 23. In Germany, the minimum for crimes and delicts is three marks and for contraventions one mark—P. C., 27.

Section 67.

No matter what the offence may be for which imprisonment is imposed in default of payment of fine, the imprisonment is in the criminal jail. A person committed to prison in England under 6 & 7 Vict., c. 73, s. 32, and 23 & 24 Vict., c. 127, s. 26, for acting as a solicitor though not duly qualified, is a "criminal prisoner" within 28 & 29 Vict., c. 126, s. 4, and is therefore not entitled to be treated as a first-class misdemeanant under 40 & 41 Vict., c. 21, s. 4.

Section 70.

Prescription and Limitation.

In Hungary, prosecution is barred by (1) the death of the offender, (2) royal pardon, and (3) prescription—P. C., 105. In India, there is no prescription, see notes under s. 191, C. P. C. In Hungary, the prescription is 20, 15, 10, or 5 years, according as the punishment for the offence is death, imprisonment exceeding 10 years, imprisonment exceeding 5 years, or any lesser punishment—*id.*, 106. In Holland, the prescription is only a year for contraventions and press delicts, six years for delicts punishable with a maximum of three years' imprisonment, and so on in an ascending scale—P. C., 70. By some Codes prescription is broken by some administrative step taken towards prosecution of the offender; by others a judicial act is necessary. Where private sanction is necessary for a prosecution, the limitation is generally three months, *e.g.*—Germ. P. C., 61; Hung. P. C., 112. In Denmark, it is one year—P. C., 67. There is a curious provision in the Dutch Code (74) that where an offence is punishable by fine only, and the offender voluntarily pays the maximum fine, the right of prosecution ceases.

Section 73.

"The Court *may* order."—Ought a judicial Court merely to look to the gravity of the offence, or should it consider the physical con-

dition or health of the offender? Some Codes specify the duties of the prison doctors, and give him power to stop the solitary confinement on ground of danger to health.—Hung. P. C., 32; Dutch P. C., 12, 22. The Danish Code gives the doctor considerable power of varying the amount and degree of punishment.—P. C., 13, 15, 22, 23.

Section 75.

Recidivism.

The question of recidivism has received much attention from continental criminalists. In France and Belgium an offender is not considered a recidivist, if more than three or five years have elapsed since his release from prison.—Belg. P. C., 56. In Holland a lapse of five years, and in Denmark and Hungary of ten years from such date prevents the infliction of any enhanced punishment.—Dutch P. C., 421—423; Den. P. C., 61; Hung. P. C., 338, 349, 371, &c. In England it would seem that the enhanced punishment must be inflicted, no matter how great the lapse of time since the previous conviction.—24 & 25 Vict., c. 96, ss. 7, 8; *id.*, c. 29, s. 12. The Indian Penal Code is marked by a similar defect. The Russian and French Penal Codes extend the principle of *la récidive* to a large number of offences. Russ. P. C., 131, 132; Fr. P. C., 56—58. In Russia recidivism is defined to be "the repetition of the same crime, or perpetration of any crime after a previous conviction." On the other hand, the German Code resembles the English law in not regarding recidivism as a general ground for enhanced punishment, but only in the case of certain offences, as for example, theft, fraud, concealment of stolen property.—Germ. P. C., 244, 250, 251, 261, 264. In England and India the principle, speaking broadly, is applied only to cases of larceny and offences relating to coin. In Hungary the principle is applied only on a *third* conviction for certain specified crimes and delicts, but on a second conviction in the case of contraventions.—Hung. P. C. (Crimes and Delicts) 338, 349, 371, 381; these offences are theft, robbery, concealment of stolen property, and cheating.—Hung. P. C. (Contraventions) 67, 79, 85, 89, 92, &c. A lapse of two years only excludes the application of enhanced punishment in the case of contraventions, and in Holland a lapse of one year.

Criminal Liability.

Section 76.

Ignorance of Law.

Ignorantia juris non excusat.—This rule is based on considerations of public policy, but there may be cases in which those very considerations should exclude its too rigid application. The rule often works harshly when applied to acts which are merely *mala prohibita*. The true *ratio decidendi* is that ignorance of the law, which prevents a man from entertaining the intent necessary for a criminal act, will excuse him; but ignorance that the law punishes a certain act is no excuse. The provision on the point in the Hungarian Penal Code is that ignorance, or a *wrong interpretation* of the law, does not exclude criminal liability.—Hung. P. C., 81. The Danish Penal Code (42), enacts that punishment is not excluded by ignorance of the law, by a false opinion that an act forbidden by the law is permitted or even commanded by the conscience or religion, or conversely, that an act commanded by the law is not permitted on similar grounds, or even

by the nature of the offender's motives or object. The case of the "Peculiar People," who were charged with manslaughter for neglecting to provide aid for a sick child, appears to present a mixed question of law and fact.—*R.* v. *Wagstaffe*, 10 Cox, C. C., 530. It was in consequence of the acquittal in this case that 31 and 32 Vict., c. 122, s. 37, was passed. The maxmum *ignorantia juris* was pushed to an absurd length in presuming knowledge concerning the most recently passed statutes. Formerly every Act took effect from the first day of the session in which it was passed.—33 Geo. III, c. 13, enacted that its operation should begin from the day when it received the royal assent. An Act cannot come into force in India until it has been thrice published in the official Gazette ; and even so its operation is generally postponed to some subsequent date. The rule of the Code Napoléon is that laws take effect from the time when the public may reasonably be supposed to know of their existence, regard being had to the course of the post, the time of publication, and other matters.

The belief, though erroneous, of a prisoner in the existence of a right to do the act complained of excludes criminality.—*R.* v. *Twose*, 14 Cox, C. C.,327.

Section 77.

Judicial Acts.

It is a well-established rule in England that a judicial officer is not liable to be sued (much less prosecuted) for an adjudication according to the best of his judgment upon a matter within his jurisdiction : and a matter of fact so adjudicated by him cannot be put in issue in an action against him.—*Kemp* v. *Neville*, 10 C. B., N. S., 523. See notes under s. 197, C. P. C. In this case the Court said : "The honest, good, and constitutional mind will always wish to leave Judges entirely free and unbiassed ; and will rather entrust them with a high and unquestionable authority, and, if guilty, leave their punishment to Parliament alone, than hazard their fortitude and independence by the alarm, and question, pains and expense of as many actions as there may be acts of duty encountering the bad passions and prejudices of mankind." "If you once break down the barrier of their dignity, and subject them to an action, you let in upon the judicial authority a wide, wasting, and harassing persecution, and establish its weakness in a degrading responsibility."—See also *Fray* v. *Blackburn*, 3 B. & S., 576 ; *Calder* v. *Halket*, 3 Moo. P. C. C., 28. But if a Judge has no jurisdiction, and is not misinformed as to the facts on which jurisdiction depends, he is civilly amenable for his act.—*Holden* v. *Smith*, 14 Q. B., 841. This is the same as the Indian law, as there would be an absence of good faith. A Judge in India includes a Magistrate (s. 19) and s. 77 applies to *all judicial officers alike.* In England, Judges of Courts of Record are more protected than others. The liability of Justices is regulated by special Acts.—See Burns' Justice ; Addiston on Torts (5th Ed.) 600—626 ; Paley on Summary Convictions (6th Ed.), Pt. IV. ; 11 & 12 Vict., cc. 42, 43, 44 (Jervis's Acts) ; 42 & 43 Vict., c. 49 ; 47 & 48 Vict., c. 43 ; *Gelan* v. *Hall*, 2 H. & N. 379.

No action will lie against a Judge for any acts done orwords spoken in his judicial capacity in a Court of Justice.—*Scott* v. *Stansfield*, L. R., 3 Ex., 220, confirming many previous decisions. "The rule is founded on the necessity of Judges being independent in the exercise

of their office. See Act XVIII of 1850, s. 1. The Indian law covers all acts of a judicial nature, done in Court or out of Court.—2 Moo., I. A., 308.

Section 79.

Erroneous idea as to the Law.

It is possible that in India persons are sometimes convicted of murder, who should be acquitted under this exception. For instance, a belief in witchcraft is common in many parts of Bengal, and it may be a question, where a witch has been murdered, whether the accused was labouring under a mistake of fact, whether he in good faith believed he was exercising the right of private defence, and that he could have in no other manner averted the evil or harm he feared. Bishop lays it down that "if one has *reasonable cause to believe* the existence of facts which will justify a killing, he is legally guiltless of the homicide." He mentions a very peculiar case, in which an Indian was tried in Washington territory for the murder of another Indian. The defence was that he committed the homicide to save his wife from being killed through a pernicious power of the deceased. Evidence was given to show that the deceased was reputed to be a *musatchee tomaawos* man, a bad doctor man, a sorcerer, a man able at his will to bring unseen evil agencies to bear upon the bodies of the living; also that the defendant and with him all his tribe was born into the belief in *musatchee tomaawos*, and this belief controlled him in the homicide. The Judge charged the jury that the law permitted one to kill another to save his wife's life, which the latter was in the act of taking away; and though they would not themselves credit the deceased with the power attributed to him, yet, if the defendant in good faith did, and this belief was a reasonable one in *him*, considering his education and surroundings, it would furnish him, under the circumstances proved, a good defence. The jury acquitted. Bishop even goes further and remarks: "If the learned Judge committed any error in this case, it was in requiring that the mistaken belief should be a reasonable one for the defendant to entertain."—Bishop Cr. Law, i., 305. Compare the English case of *R.* v. *Wagstaffe*, 10 Cox, C. C., 530. The records of Bengal Courts teem with cases in which men have been convicted and even hanged for acts such as the one described above. Hale remarks: "Where there is no will to commit an offence, there can be no transgression." The German Penal Code (59), enacts that when the doer of an act is ignorant of the existence of circumstances which make it criminal or aggravate its criminality, he is not liable unless, in the case of negligent or imprudent acts, the ignorance is the result of negligence or imprudence. The French Code contains no analogous provisions, but that the doctrine may be applied may be inferred from a number of sections, *e. g.*, 60—63, 83, 96, 99, &c. In Russia accidental error or mistake of fact relieves from responsibility; but in certain cases the Court may impose an ecclesiastical penance.—Russ. P. C., 99.

Section 80.

Accident.

See notes under s. 301. In Russia (P. C. 93), accident is not a defence if the act was unlawful; and even where the act is lawful, the doer of the act is in some cases submitted to an ecclesiastical penance.

"in order to calm his conscience." There is no analogous provision in the French or German Codes; but it must be borne in mind that the Continental Codes generally give a very clear definition of criminal intention, and the special sections regarding accident are, after all, but the legislative embodiment or amplification of the well-known French maxim "Sans intention, point de délit." In Hungary (P. C. 75) no act which is not committed voluntarily can be a crime, and the rule also applies to delicts, except where certain acts, resulting from negligence, are declared to be qualified delicts in the special part of the Code. In France, even accidental contraventions are punishable; for instance, a man is punishable for the fact of his chimney being on fire, quite apart from accident or even negligence. In Denmark, acts committed from inattention or negligence are not punishable, unless the law expressly declares otherwise.—Den. P. C., 43. See notes under s. 268.

Section 81.

It was held that this section was no defence in a case where the defendant, a toddy-tapper, having frequently had the juice from his pots stolen, put the juice of the milk-bush in, knowing it would cause injury to any person drinking it, and in order to detect the thief, and some soldiers, who purchased the toddy from an unknown vendor, were injured by drinking it.—5 Bom. H. C., Crim., 59.

Section 83.

Age.

Substituting 14 for 12, the law is the same in England as in India, except that a child between 7 and 14 in England is presumed to be *doli incapax*, whereas a child between 7 and 12 in India is presumed to be *doli capax*. I think the age of exemption from criminal prosecution might be raised in India to 9, and in England to 11, while the limit of what may be called the conditional period should be raised in India from 12 to 14, and in England from 14 to 16. The severity and even cruelty of early English criminal law should be borne in mind. It has had to be avoided indirectly; *e. g.*, offenders under 16 may be sent to reformatory schools for from two to five years. 29 and 30 Vict., c. 117, s. 14. As regards India, see Act V of 1876. Then the Summary Jurisdiction Act of 1879, has its special definitions of "child" and "young person." A child charged with any indictable offence other than homicide may, if the parent consents, be tried summarily, and sentenced to a month's imprisonment or a fine of forty shillings, and (if a male) to whipping in addition or substitution; while certain offences by young persons may, if they consent, and the Court considers it expedient, be dealt with summarily, and the offender imprisoned for three months or fined up to £10, and (if a male under 14) may be whipped in addition or substitution. Bishop remarks: "Although we may well suppose there are instances in which a child under 14 should be punished by the tribunals as criminal, clearly the age of seven years, as the age of possible capacity, is much too young for punishment to be given by the hand of the law; though it should be given at the hand of the parent, and the latter, rather than the former, be made to suffer the consequences of its neglect." At the same time the administrative authorities should be empowered, as on the Continent, to take such measures as may be necessary for the public safety.

In France and Belgium, if the accused under 16 has acted without discernment, he must be acquitted, but he may either be made over to his parents, or placed in a reformatory (*maison de correction*) till his twentieth year. Fr. P. C., 66, 70; Belg. P. C., 72–74. The Dutch Code (38, 39) takes the ages of ten and sixteen; the Hungarian Code (83, 87) twelve and sixteen; the Danish Code (35, 37) ten, fifteen, and eighteen. Under ten or twelve there can be no prosecution. Between ten and sixteen, if the act be committed with discernment, the punishment is reduced by one-third. In Denmark discernment is presumed from fifteen, but from that age to eighteen punishments are reduced to one-half. The State may take measures of correction or safety, and by some Codes the child may be placed in a State school till 18 or 20.

In the Orient *malitia supplet ætatem*, and a case is reported in the Weekly Reporter (1 W. R., Cr., 43) in which a girl aged ten killed her husband while he was asleep, by chopping off his head with a chopper. The Russian law on the subject of age is minute. M. Albert du Boys, writing in 1874 regarding the Russian Criminal Law, remarks that "for the past few years Russia has presented the singular example of a country, which reforms its judicial institutions in a liberal manner before reforming its political institutions from the same point of view." The Russian system may be summed up as follows: Up to seven, no offence or punishment; from seven to ten, no public punishment, but merely domestic correction; from ten to fourteen, the same, if no discernment; otherwise, punishment on a very reduced scale; from fourteen to twenty-one, punishment on a reduced scale, with power to the Court to send the offender, if under seventeen, to an asylum of correction for some months; in case of recidivism, suppression of all privileges accorded to age. Russ. P. C., 94, 137-146. In Texas the age-periods are by Statute nine and thirteen; in Illinois ten and fourteen; on the Continent, as has been seen, the age varies from ten to twelve. Certainly the English and Indian law require some alteration, and perhaps some age should be fixed, below which the penalty of death should not be inflicted.

Section 84.

Insanity.

A mere uncontrollable impulse of the mind, co-existing with the full possession of the reasoning powers, will not warrant an acquittal on the ground of insanity: the question is whether the prisoner, at the time he committed the act, knew the character and nature of the act, and that it was a wrongful one. *R.* v. *Barton*, 3 Cox, C. C., 275. Although insanity on one point, *e. g.*, a delusion as to property, will not exempt a party from responsibility, the fact is not immaterial in considering his responsibility at another time, and on another subject. The want of motive for the commission of the crime, and its being committed under circumstances which render detection inevitable, are important points for the consideration of the jury, when coupled with evidence of insanity on any particular point. *R.* v. *Layton*, 4 Cox., C. C., 149.

Article 64 of the French Penal Code enacts that it is no offence when the accused is in a state of mental alienation at the time of the commission of the act, or when he is constrained by a force which he cannot resist, as, *e. g.*, when the husband kills the adulterer surprised

in flagrante delicto. Some Codes specially mention the deaf and dumb: others declare those to be irresponsible who are so old as to have reached their second childhood.

Section 86.

Intoxication.

Baron Hume thinks that it ought to be a mitigation of the offence of seditious language that the words were not deliberately spoken, but uttered when the speaker was intoxicated. Hume i, 46, 47, 570. The old doctrine that drunkenness aggravates an offence—*qui peccat ebrius, luat sobrius* and *ebrietas crimen incendit*, &c.—has become exploded. It is perhaps correct to say that voluntary drunkenness furnishes no excuse for crime. But the modern tendency is to consider drunkenness as a fact which, like any other fact, should go to the jury. The severity of the Civil and Common Law (see 4 Coke, 123 b.) sprung from the idea that it was wrong to drink, that drunkenness was *malum in se*. Modern jurists (*e. g.*, Paley, Mittermaier) view drunkenness more leniently. The American doctrine is well put by Baldwin, J.; "Intoxication is no excuse for crimes when the offence consists merely in doing a criminal act, without regarding intention. But when the act done is innocent in itself, and criminal only when done with a corrupt or malicious motive, a jury may presume from the fact of intoxication that there was a want of criminal intention; that the reasoning faculty, the power of discrimination between right and wrong, was lost in the excitement of the occasion." *United States* v. *Roudenbush*, 1 Bald., 514. In the Tennessee Court, Reese J., said: "When the nature and essence of a crime are made by law to depend upon the peculiar state and condition of the criminal's mind at the time, and with reference to the act done, drunkenness, as a matter of fact affecting such state and condition of the mind, is a proper subject for consideration and inquiry by the jury. The question in such case is, "What is the mental *status?*" *Swan* v. *The State*, 4 Humph., 136.

There are no special provisions as to drunkenness in most of the Continental Criminal Codes. The German Penal Code (51) enacts that the doer of an act is not punishable, when, at the time of doing it, he was "deprived of knowledge" owing to "temporary or chronic malady." The Hungarian Penal Code (76) speaks of a "state of unconsciousness or troubled state of the intellectual faculties." The case-law in France corresponds to the provisions in the Russian Penal Code (106). This Code solves as follows the complex problem of the influence of drunkenness on culpability: If the drunkenness be involuntary and accidental, there is no offence; if it arises from imprudence, recklessness, or from occasional or habitual intemperance, the offender is punishable for having made himself drunk, but he only incurs a *penal* responsibility for his acts in proportion as he was still in possession of his faculties; desired or intentional drunkenness, at the time of accomplishing a premeditated offence, aggravates culpability. Of course if a man intends to commit murder or any other offence, and then drinks bhang or liquor to nerve himself, he is guilty, though he may be drunk when he commits the act, as the element of specific intention is fully present.

Section 86.

The Indian law is harsher than the English law. Dr. Markby points out that under this section a drunken man who takes a

counterfeit coin, which he would certainly have discovered to be counterfeit if he had been sober, and pays it away without discovering it, might be convicted of passing counterfeit coin, knowing it to be counterfeit—a remarkable result! *Elem of Law* (3rd ed.), s. 751.

Section 88.

Consent.

Where consent is given to an unreasonably dangerous operation or treatment by one who relies on the prisoner's skill, it does not excuse him from the guilt of manslaughter if death ensues.—*Commonwealth* v. *Pierce*, 138 Mass., 165, 180.

Section 90.

"Unless the contrary appears from the context." See s. 375. In the case of rape, the age of consent is reduced to ten years.

Section 94.

Offence by Wife.

A wife went from house to house uttering base coin. Her husband accompanied her, but remained outside:—*Held*, that the wife acted under the husband's coercion. *Conolly's case*, 2 Lewin, C. C., 229. But on an indictment against a married woman for falsely swearing herself to be next-of-kin, and procuring administration:—*Held*, that she might be guilty, although her husband was with her when she took the oath.—*R.* v. *Dicks*, 1 Russ. C. and M., 16.

Section 94.

In Denmark a married woman, living with her husband, is not punishable, if there are grounds for supposing that, had she refused to commit the offence, she would have been subjected to ill-treatment or compelled to quit the conjugal house. This rule applies also to other persons, who are dependent on the master of the house and specially subject to his influence. P. C., 56.

Section 95.

Coercion.

The English reports show that trifling larcenies have been punished which would probably have gone unpunished in India. It has been held that an indictment for larceny may be maintained, even though the value of the thing taken be less than the smallest coin or denomination of money known to the Law. *R.* v. *Morris*, 9 Car. & P., 349. In the case of arson, on the other hand, it appears reasonable that the maxim *de minimis* should not be applied. As to hunger-thefts, see under s. 378.

Section 99.

Private Defence.

The Indian law is that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence. Under the old Prussian Penal Code, it is no offence if the limits of defence are exceeded through terror, fright, or horror. Chap IV: also Germ. P. C. 53. There is an exactly

similar provision in art. 79 of the Hungarian Penal Code. Article 41 of the Dutch Penal Code enacts that "he is not punishable who commits an act required by the necessary defence of the life, honour, or property of oneself or of another person against a sudden or illegal attack. An act is not punishable, which has exceeded the limits of necessary defence, if such act has been the immediate result of violent emotion caused by the attack." So art. 40 of the Danish Penal Code enacts that "when the limits of legitimate defence are exceeded, the Court must decide, according to circumstances, whether the accused must be held responsible, or whether, owing to the anxiety caused by the attack and fright, the act may be considered justifiable." Even in the former case a lesser punishment is applied.

Section 100.

"Such an assault as may reasonably cause the apprehension that death will otherwise be the consequence of such assault." Under circumstances, which might have induced the belief that a man was cutting the throat of his wife, their son shot and killed his father. On the trial of the son for murder:—*Held*, that if the accused had reasonable grounds for believing and honestly believed that the act was necessary for the defence of his mother, the homicide was excusable. *R.* v. *Rose*, 15 Cox, C. C., 540.

Section 107.

Abetment.

By English law a conspiracy is divisible into three heads: (1) where the end to be attained is itself a crime: (2) where the object is lawful, but the means to be resorted to are unlawful: 3) where the object is to do an injury to a third party, though if the wrong was inflicted by a single individual, it would be a wrong and not a crime.—*R.* v. *Parnell*, 14 Cox, C. C., 508. A conspiracy, though nothing be done in pursuance of it, is an offence.—*R.* v. *Best*, *id.*, 174. It is not necessary to prove any direct or immediate injury, or even to show any specific overt act.—*R.* v. *Robinson*, 1 Leach, 37. Where persons combined to prosecute a man for robbery, of which they knew he was innocent, in order to get the reward offered, held, a conspiracy.—*R.* v. *Macdaniel*, 1 Leach, 45. "Intentionally aids by any act or illegal omission." "Suppose," says Hume, "that a person stands by and witnesses without remonstrance or sign of dissent the protracted efforts of one individual to ravish a woman, or to drown, or to throw another over a precipice, could any distinction be drawn between such a case and one of direct participation"? Perhaps, the strongest example that can be imagained of this sort, is that of an official standing by and not doing his duty, and so allowing a breach of the law.—Hume, i., 397; Alison, i., 506. The latter might be an illegal omission under Indian law, and so would be abetment. See notes under s. 299, *infra*. Can there be an offence by simple omission of some act, which is not a legal duty? Apparently not in England and India. The difficulty has been felt by the framers of some of the more recent Criminal Codes, and a sort of compromise is effected by dealing with the matter as a contravention, and not as a crime or delict. Article 450 of the Dutch Penal Code enacts that "he who, seeing another person suddenly threatened with the danger of death, omits to give or furnish him with assistance which he can

give or procure without any reasonable fear of danger for himself or others, is punished, if the death of the person in distress has resulted, with detention for three months and a fine of 300 florins. The Russian Penal Code imposes ecclesiastical penance in such a case. See notes under s. 299.

Accession after the fact is only recognized in the case of treason; otherwise it is not recognized, except as an element of evidence, from which previous participation may be inferred.—Hume, i., 281.

Section 108, Expl. 3.

Where the prisoner sent a little boy to get wages due to B, and the boy went innocently to the pay-table and said to the treasurer, "I am come for B's money;" and B's wages were given to him:—*Held*, that the prisoner might be convicted of obtaining the money by false pretences.—*R.* v. *Butcher*, 8 Cox, C. C., 77.

Section 108, Expl. 2.

To solicit a servant to steal his master's goods is a misdemeanour, though it be not charged in the indictment that the servant stole the goods.—*R.* v. *Gregory*, L. R., 1 C. C. R., 77, 24 and 25 Vict., c. 94. It is no defence that the servant purposely submitted himself to the incitement with intent to betray the incitor.—*R.* v. *Quail*, 4 F. & F., 1076. An attempt to suborn a man to commit perjury is a misdemeanour.—See *R.* v. *Scofield*, Cald., 397.

Section 111.

The rule is different in Hungary, where the abettor is not liable for the commission of a more heinous act than that abetted.—P. C., 73.

Section 114.

Lord Audley was convicted as a principal of a rape on his own wife, having helped another man to ravish her. 3 Howell's State Trials, 401.

The witnesses of a bigamous marriage are guilty if they lend themselves to the fraud, by concealing it from the celebrant, or from the party who is deceived.—Hume, i., 462; Alison, i., 539.

Section 124.

See ss. 186, 353. Continental Codes extend the scope of this section much lower down in the official scale. For instance, the Hungarian Code (163) speaks of violence or menace against any "authority," administrative, judicial, or military, but the maximum punishment is five years. The word authority includes municipal and communal authorities. Passive resistance is not sufficient. "Threat of danger" means threat of an offence, which is of a nature to awaken in the person threatened a reasonable fear of the prospect of immediate danger.—*Id.*, 167. The Dutch Penal Code resembles the Indian Code in reserving the higher punishment for violence or threats used towards a member of the State or provincial assemblies.—P. C., 121, *seq.* See also Den. P. C., 95; Germ. P. C., 105, 106, 114.

The valuable privilege of petitioning was expressly sanctioned and secured in the Bill of Rights, 1 W. & M., Sess. 2, c. 2, which declares that "it is the right of the subjects to petition the king; and all commitments and prosecutions for such petitioning are illegal." Parliament will now receive any petition respectfully worded. May

Parl. Prac., 612, *seq.* 9th Ed. On the trial of Lord George Gordon, Lord Mansfield expressly decided that the Statute 13 Car. 2, had not been repealed.—21 St. Tr., 646 ; see also 57 Geo. III. c. 19, s. 33. "Lord Mansfield, in his charge to the Grand Jury, said : "To petition for the passing or repeal of any Act is the undoubted inherent right of every British subject, but under the name and colour of petitioning to assume command, and to dictate to the legislature, is the annihilation of all order and Government."—21 St. Tr., 487. When the Chartist petition of 1848 was about to be presented, notices were posted by the Police, citing the Act of Charles II. By the precautions taken the affair passed off peaceably.—Molesworth, Hist., Eng., p. 354.

Section 124A.

Seditious Writings.

As regards the offence of sedition under Scotch law, Macdonald remarks : "If the conduct of the accused has been such as was calculated to create disaffection, and to incite to violence and tumult, it is not necessary that there should have been a positive intention on his part to do so . . . . The same acts may be passed over with contempt at one time, which at another it might be necessary to check by decisive measures."—Macdon., 229.

Offences under this section are of weekly occurrence in the native press, but neither the Government of India nor Local Governments deem it necessary or expedient to direct prosecutions. For a long period of English history it was unsafe for any one, out of Parliament, to venture to assert that the system of government was imperfect.—*Binns' case*, 26 St. Tr., 598. A statement of opinions, for the utterance of which persons have been severely punished, would astonish those who do not know constitutional law.—See Odgers on Libel and Slander, 410—422 ; *Frost's case*, 22 St. Tr., 471 ; *R.* v. *Winterbotham*, 22 St. Tr., 823. A more rational construction of language has prevailed since Fox's Libel Act, 32 Geo. III, c. 60. See Forsyth, Trial by Jury, 268—282 ; May, Const. Hist. ii., 109—117 ; Camp. Chancellors, V, 295. Words are not now considered seditious, because they merely criticise the Government, ordinary decency of expression being all that is requisite to ensure immunity.—In the case of *R.* v. *Sullivan* (11 Cox, C. C., 50), Fitgerald J., remarked : "There is no sedition in censuring the servants of the crown, or in just criticism on the administration of the law, or in seeking redress of grievances, or in the fair discussion of all party questions." Recklessness in condemning Government officers, or a comparison of British and Russian Rule in favour of the latter, constitute offences under this section ; and they are of almost daily commission in the native press. The publication of any words or writings, which are directly intended to incite others to break the law, has always been punished with great severity in England.—*R.* v. *Neale*, 9 C. & P., 431 ; *R.* v. *Collins*, 9 C. & P., 450 ; *R.* v. *Pigott*, 11 Cox, C. C., 47 ; *R.* v. *Sullivan*, 11 Cox, C. C., 50 ; *R.* v. *Most*, L. R., 7 Q. B. D., 244.

There is a somewhat exceptional provision in the Hungarian Penal Code, which enacts that he who in public apologises for an offence or praises the author of it is punishable with six months' imprisonment. The limitation for prosecution is three months.—P. C., 174. The German Code (131) contains a provision which is required in India. It is an offence punishable with fine and two years' imprisonment to

knowingly publish incorrect or exaggerated accounts of Government institutions or official acts, with the object of bringing them into contempt.

Section 128.

Beng. Reg. III of 1818, Mad. Reg. II of 1819, and Bom. Reg. XXV of 1827, relate to State prisoners. It will be seen from sec. 130 that there is no exception in favour of the husband or wife, as regards harbouring a State prisoner.—Cf. ss. 136, 212, 216.

Section 149.

Where persons assembled to obstruct the officers of the law, and a homicide was committed in consequence of the unlawful assembly, every one taking part in the unlawful assembly may be personally responsible for the homicide.—*R.* v. *McNaughten*, 14 Cox, C. C., 576.

Section 159.

It seems curious that this offence should not be cognizable by the Police in India. In England a constable may arrest and carry the offenders before a Justice, or detain them till their trial be over.—1 Hawk., P. C., c. 63, S. 13. But the affray must have been still continuing at the time of apprehension.—*Cook* v. *Nethercote*, 6 C. & P., 741.

Section 161.

Bribery.

Under 33 Geo. III, c. 52, s. 62, the demanding or receiving gifts by British officials in India is a misdemeanour.

"Public servant." This includes railway servants under Act IV of 1879, s. 27, and telegraph officers under Act XIII of 1885, s. 31. In 1885 the Chamber of Commerce asked that the bribery provisions should be extended to the "official measurers," who are persons nominated by a joint committee of shippers and ship-owners, and whose measurements shippers and ship-owners agree to accept as conclusive in questions arising between them. But the request was refused. As regards railway and telegraph servants, the public are practically compelled to deal with them as much as with the officers of Government. The legislature has not extended the principle to any person other than those employed directly by the state, and those employed by persons exercising powers reserved to the state, but delegated by the state to licensees.

Public servants include all persons who, by reason of their duties on employment or a special commission, are bound to perform some administrative or judicial service for the state, for a municipality, or a commune, as well as persons employed as doctors or servants in public establishments, hospitals, and lunatic asylums, administered directly by the state, a municipality, or a commune.—Hung. P. C., 461. Receipt of presents is forbidden: but this prohibition does not apply to voluntary payments of something more than the ordinary fees to public notaries, unless they are acting as delegates of justice; nor to authorised allowances paid by private persons for work outside the scope of an officer's ordinary duties; nor, in fine, to the small customary presents made to officials, provided they are given without any solicitation, and the rules of the service do not expressly forbid their acceptance.—*Id.*, 466.

Chapter 42 of the Hungarian Penal Code includes provisions regarding advocates. If an advocate places his services at the disposal of both parties, or ceases to act for his client in order, without his consent, to act for the opposite party, he is punishable with three years' imprisonment; if he acts in concert or collusion with the opposite party to the prejudice of his own client, the punishment is five years. If in a criminal case he is corrupted by gifts or promises and acts in any way to the prejudice of his clients interests, he is punishable with three months, a year, or five years, according as the case relates to a contravention, a delict, or a crime.—P. C., 482, 483.

The Indian law makes no distinction between legal or illegal acts of a public servant. In Germany, in the former case the public servant is punishable with six months' imprisonment and fine: but if he takes a gratification for doing some act contrary to his duty, he is punishable, as guilty of corruption, with five years' imprisonment.—Germ. P. C., 331, 332.

Section 165.

The receiving of gifts by public servants of the Crown or the East India Company was forbidden by 13 Geo. III., c. 63, ss. 23—25, and 33 Geo. III., c. 52, s. 62.

Section 171.

To use a title or usurp a rank which does not belong to one, so as to deceive the public, or to publicly wear orders or decorations, which do not belong to one, is punishable with a fine of 100 florins,—Hung. P. C. Cont., 45.

Section 176.

See sec. 44, C. P. C. The Indian Code excepts nobody. In Hungary the obligation to give information of treasonous plots does not apply to certain near relatives.—P. C., 78, 135.

Section 186.

Obstruction of Public Servants.

On an information against the defendant for obstructing an officer in the execution of his duty, Lord Kenyon said: "The defendants counsel have no right nor shall they be permitted to inquire the name of the person who gave the information of the smuggling of goods.—*R.* v. *Akers*, 6 Esp. n. "It has been resolved by a majority of the Judges that the officer is not obliged to declare the grounds of his suspicion, *lest accidents should happen to him.*" *Per* Buller J., in *Cooper* v. *Booth*, 3 Esp. 135. See ss. 124, 125 Evidence Act.

Section 187.

Assistance to Public Servants.

As to the general obligation to assist the Police and the Magistrate, see s. 42, C. P. C. In India and England there is no legal obligation to assist persons in danger of perishing. See under s. 299. In Denmark, a person who can assist another in danger, without putting his own life or health in peril, is punishable if he does not do so, and that other perishes: so if persons do not make use of the usual means to resuscitate persons who have been hanging,

nearly drowned, or in a state of apparent death.—P. C., 199. In Germany those who refuse to assist the Police or the authorities on the occasion of accidents, public calamity, or distress, when they can do so without exposing themselves to serious danger, are punishable with a fine of 150 marks or imprisonment.—P. C. 360 (10).

In India there is no legal obligation on doctors to attend any particular case. In Hungary, the doctor or surgeon in practice, who refuses or delays, without sufficient grounds, to give medical aid in a case of danger, or who does not accept the orders of the authorities in a case of epidemic, is punishable with a fine of 100 florins.—C. C., 93. In pressing cases mid-wives are subject to the same penalty, as well as druggists, who refuse or delay to give the medicines prescribed. If the doctor, &c., is appointed by the state, a municipality, or a commune, the fine is 300 florins.—*Id.*, 94. So in the case of a veterinary surgeon, 97. Abandonment of duties in a time of epidemic is also punishable. There are similar provisions in the Russian Penal Code, 1521, 1522.

Section 191.

Perjury.

On the point of materiality, Sir James Stephen remarks: "To allow a witness to answer immaterial questions falsely, is to extend an arbitrary impunity to a certain number of perjuries, for *it cannot be supposed that any witness knows at the time of swearing, whether the question which he answers is material or not.*"—Gen. View, Cr. L., (1863) 279. Certainly most witnesses would not know. The doubtful wisdom of the English rule is evident from the remarks of Erle, C. J. in the case of *R.* v. *Mullany*: "Whenever the question arises whether a person may not be guilty of perjury who, with intent to mislead the Court, wilfully swears falsely on a matter which, in the opinion of the Judge, is of doubtful admissibility, or immaterial to the inquiry, it will be one *well worthy of the careful consideration of all the Judges.*"—34 L. J. (M. C.) 111. In India it is the object of the law to eliminate all possibility of failures of justice from technical omissions and irregularities, and s. 13 of Act X of 1873 (the Indian Oaths Act) enacts that an omission to give an oath does not invalidate proceedings, and it has been ruled that the word omission includes any omission, and is not limited to accidental or negligent omission.—13 W. R., Cr., 31; 14 B. L. R., 294, 295, *note.*

The English law requires that the false evidence shall have been given before a competent Court. But if the witness intentionally makes a false statement, the offence is not in any way lessened or removed by the fact that it may subsequently turn out that the Court was not competent to try the case, just as a witness cannot always know if a question is material or not. But there is an English case that irregularity in the institution of the proceedings is no ground for upsetting a conviction for perjury.—*R.* v. *Barry*, 8 Cox. C. C., 121. The Madras and Allahabad High Courts have upset convictions on the ground of such an irregularity.—I. L. R., 6 All., 103; 5 All., 17; 6 Mad., 252.

In Germany the punishment is reduced to from ¼ to ½ the ordinary punishment, if the declaration of the truth would have brought on the witness a prosecution for a crime or delict, or if the witness has deposed falsely in favour of a person with regard to whom

he was not bound to depose, but was not informed of his right. —P. C., 157; with the exception of this case, a conviction for perjury carries with it a deprivation of civic rights and a permanent incapacity to testify as a witness or an expert. *Id.*, 161. The Danish Penal Code (148) contains a somewhat severe provision that if a witness, solely from *want of reflection*, has omitted to communicate all that he knew about the matter, he will be punished with imprisonment or, if there are very extenuating circumstances, with fine only.

Section 193.

As to punishment, some Continental Codes draw a distinction between civil and criminal matters, and cases in which the subject of the charge is merely a police contravention; in this last case a year's imprisonment is generally the maximum. Article 216 of the Hungarian Penal Code makes the maximum punishment a year, and a fine of 400 florins, when the value of the civil suit does not exceed 100 florins. The breaking of professional and official oaths by experts, translators, interpreters, &c., is also made punishable, though this does not amount to perjury in England. Certain false oaths, though not taken in a judicial proceeding, are in England punishable as misdemeanours, but not as perjury; for instance, the oath required to be taken before a surrogate in order to obtain a marriage licence.—*R. v. Foster*, R. and R., 459.

Section 197.

False Certificates.

The law on the subject of false certificates in Holland is very comprehensive. A doctor who intentionally gives a false certificate of the existence or non-existence, present or past, of a malady, illness, or infirmity, is punishable with three years' imprisonment; if the certificate is given with the intention of causing some person to be admitted into a lunatic asylum, the punishment is seven years. The person who uses the false certificate as true is also punishable. Article 230 contains provisions similar to those in the French Penal Code.—Dutch P. C., 228—230. In Hungary a doctor who gives a false certificate to a public authority or to an Insurance Company, is punishable with a year's imprisonment; and a man who, though not really a doctor, gives a certificate as if he were one, is punishable in the same way. Those who knowingly make use of such certificates are also punishable. Every Major of a commune, who knowingly gives a false certificate concerning the character or pecuniary resources of any person, is punishable with six months' imprisonment, a fine of 200 florins, and deprivation of office.—Hung. P. C., 408, 411; see also C. C., 71. The law in Germany is much the same, the punishment being a minimum of one month and a maximum of two years' imprisonment—Germ. P. C., 278—280.

Section 201.

It has been ruled that this section does not cover the case of the actual offender.—I. L. R., 2, All., 713; 8 Bom. H. C., 126. But construed strictly, the section does cover the case of the criminal concealing his own crime. If the legislature meant otherwise, it could and would have said so.

Section 211.

False Charges.

The intent to cause injury may be inferred from the falseness of the charge, just as in England the jury may infer malice from the fact that there was no reasonable or probable cause for the prosecution.—*Busst* v. *Gibbons*, 30 L. J., ex. 75. As to reasonable and probable cause, see *Hicks v. Faulkner*, 8 Q. B. D., 167.

In England if a malicious prosecution is the result of a conspiracy, it is an indictable offence.—14 & 15 Vict., c. 100, s. 29.

The German Penal Code (163) and the Hungarian Penal Code (225) contain provisions that he who retracts his false testimony or declaration before he has been charged or prosecuted in respect thereof, and before any harm has resulted to a third party therefrom, shall not be punishable. In Denmark a very light punishment is imposed.—P. C. 145. This Code distinguishes three cases: (1) where the accusation has been without effect: (2) where it has been followed by a prosecution: (3) where the person falsely accused has been convicted. In the first case there can be no official prosecution; that is to say, there can only be a prosecution on the complaint of the person falsely charged, and the maximum punishment is one year's imprisonment and fine. The judgment which finds a person guilty of making a false charge must, if the injured party so request, be published in the newspapers, at the cost of the condemned person.—P. C., 227—231. So in Germany.—P. C. 165.

Section 212.

Harbouring.

"Harbours or conceals." See also secs. 130, 136, 216. It probably was considered harsh to add the words "comforting," "aiding," or "assisting," on the analogy of the English Common Law. But, as the law stands, it would be virtually impossible to punish those who furnish supplies to men engaged in mountain or jungle dacoity.

Section 214

"Any person." The offence of compounding a larceny in England may be committed by a person other than the owner of the goods stolen or a material witness for the prosecution.—*R.* v. *Burgess*, 16 Q. B. D., 141.

Section 216.

In England the wife is exempted from the punishment for harbouring, but not the husband.—Bracton, b. iii., c. 32, s. 9. In New York neither is exempted.—P. C., 30, 91. The German Code (P. C., 257) exempts "relations," but does not define the term; in Holland, the exemption is extended to relatives in a collateral line to the second or third degree, while the Penal Code of Hungary details the exempted relatives at length, namely, "relatives" in ascending or descending line, brothers and sisters, cousins german, adoptive and foster-parents and children, husbands and wives, *engaged persons*, brothers and sisters-in law.—Dutch P. C., 189; Hung. P.C., 78, 378.

As to whether an offence must actually have been committed, the German Code requires this, and that assistance should have been knowingly given to the offender.—German P. C., 257. In India the section applies to all offences punishable under the Penal Code, and also all offences under special or local laws punishable with six

months' imprisonment or upwards. See definition of offence, s. 40, cl. 3. In England and New York (P. C., 30) the law applies only to felonies. There can be no accessories in the case of misdemeanours, unless the act amount to the misdemeanour of rescue or obstruction. —*R.* v. *Greenwood*, 21 L. J., M. C., 127. The law in Hungary (P. C. 374) applies to all crimes and delicts.

Section 230.

Counterfeit Coin.

Apparently the manufacture of "dubs" or dumpy pice is not penal. A provision is required in India similar to that in sec. 5 of 33 Vict., chap. 10, which provides that "no pice of gold, silver, copper or bronze, or of any metal or mixed metal, of any value whatever, shall be made or issued except by the mint as a coin or as a token for money or as purporting that the holder thereof is entitled to demand any value denoted thereon." The right of coinage has been called a "peculiarly sacred right of sovereigns," and any infringement of the State monopoly of coining should be penal.

Section 230.

In the case of the *Emperor of Austria* v. *Day* (2 Giff., 628), the defendants had manufactured a large quantity of Hungarian paper money on behalf of the rebel Government, which was presided over by Kossuth, and it was sought on behalf of the emperor to restrain them. It was objected that the Court had no jurisdiction to inquire into a matter outside English municipal law, and relating to the public and political affairs of a foreign nation. Stuart, V. C., held, that the regulation of the coin was not merely a question of municipal law, and that the prerogative of each sovereign State as to money was a great public right recognized and protected by the law of nations.—Pitt Cobbett, Leading cases, 52. As to the question of jurisdiction, see notes under s. 2, *supra*.

Section 231.

To constitute the offence of coining, it is not necessary that there should be an impression on the counterfeit, if it resembles the common worn coin.—*R.* v. *Welch*, 1 East, P. C., 87, 164.

Section 262.

It has been suggested that the words "or has reason to believe" should be inserted after "knows." There is no reason why proof of guilty knowledge should be made more difficult under this section than in the case of receiving stolen property (sec. 411).

Section 268.

Common Nuisances.

A common gaming-house may constitute a nuisance under this section.—7 Bom. H. C. Crim., 74

The carrying on of an offensive trade is an offence within s. 268, P. C., although the trade may have been for a long while acquiesced in, or was carried on long before the persons who complain went to reside in that neighbourhood.—Kyshe, Straits Settlements Rep. iii., 84. This is an important case as regards Mofussil stations in India. It

appears that the nuisance was one to the European community, and that the natives did not complain. The following English cases were quoted. Length of time cannot legalize a trade which amounts to a nuisance.—*R.* v. *Cross*, 3 Camp., 224; unhealthiness of smells not necessary to constitute a nuisance.—*R.* v. *White*, 1 Bur., 333; existence of nuisance before Europeans went there no excuse.—Archbold C. P., 891, 892.

In the case of *Rylands* v. *Fletcher*, it was held by the House of Lords, affirming the decision of the Exchequer Chamber, "that if a person brings or accumulates on his land anything which, if it should escape, may cause damage to his neighbours, he does so at his peril. If it does escape and cause damage, he is responsible, however careful he may have been, and whatever precautions he may have taken to prevent the damage."—L. R., 3 H. L., 330. Lord Cairns pointed out that the defendants had made for their own purposes "a non-natural use" of their land. On this point judicial opinions differ in the United States.—Bigelow L. C, 497—500. Mr. Pollock thinks the policy of the law might have been satisfied by requiring the defendant to ensure diligence in proportion to the manifest risk This would exactly be the rule of criminal liability in such cases. Mr. Pollock thinks it is possible to consider *Rylands* v. *Fletcher* as having only fixed a special rule about adjacent land-owners. The case has been decided by the Court of Appeal not to apply to damage of which the immediate cause is the act of God.—*Nugent* v. *Smith*, 1 C. P. Div., 423. The case of *Nichols* v. *Marsland* (L. R., 10 Ex., 255), has also mitigated the harshness of the rule. The only material element of fact which distinguished this case from *Rylands* v. *Fletcher* was that the overflow which burst the defendant's embankment, and set the stored-up water in destructive motion, was due to an extraordinary storm. The principle rule does not apply where the artificial work, which is the source of danger, is maintained for the common benefit of the plaintiff and the defendant.—*Carstairs* v. *Taylor*, L. R., 6 Ex., 217. See s. 432, *infra*. Where a zemindar maintained, *and was by custom bound to maintain*, an ancient tank for the general benefit of agriculture in the district, the Judicial Committee agreed with the High Court of Madras in holding that he was not liable, for the consequences of an overflow caused by extraordinary rainfall, no negligence being shown. In the climate of India the storing of water in artificial tanks is not only a natural, but a necessary mode of using land.—*Madras R. Co.* v. *Zemindar of Carvatenagaram*, 14 B. L. R., 209; L. R., 1 Ind. App., 364. In like manner the owners of a canal constructed under the authority of an Act of Parliament are not bound at their peril to keep the water from escaping into a mine worked under the canal.—*Dunn* v. *Birmingham Canal Co.*, L. R., 8 Q. B., 42. On the same principle a Railway Company authorized by Parliament to use locomotive engines on its line is bound to take all reasonable measures of precaution to prevent the escape of fire from its engines, but is not bound to more. If notwithstanding the best practicable care and caution, sparks do escape and set fire to the property of adjacent owners, the Company is not liable.—*Vaughan* v. *Taff Vale R. Co.*, 29 L. J., Ex., 247. Pollock, Torts, 394—403. I have gone into these cases on Torts at some length, as criminal liability under this and some of the following sections must be decided on exactly or almost exactly the same principles. Sir R. K. Wilson remarks

that there is no harm in this, as the penalty for simple nuisance is fine only, and, as compensation may be awarded out of the fine imposed, the proceedings are of a civil as well as a criminal nature. Sec. 268 speaks of causing by an "illegal omission," and these words, even if not expressed, might have been implied under s. 32, P. C. 'Illegal' includes anything which furnishes ground for a civil action. Magistrates in India frequently refer complainants to a Civil Court in cases in which the facts amount to a nuisance triable under this chapter. This refusal of jurisdiction is extremely hard on complainants, who have not a sufficiently long purse to go to a Civil Court.

Section 269.

In Hungary, a woman, who, knowing that she is affected with a contagious or syphilitic disease, takes service as a nurse, or who, after having taken such service, becomes so affected, and does not at once reveal the fact, is punishable with two months' imprisonment.—C. C., 106. See *R.* v. *Bennett*, 4 F. and F., 1105.

Possibly a person, who knowingly communicates venereal disease, might be brought under this section. This Act is specially provided for in art. 181 of the Penal Code of Denmark.

Section 272.

Adulteration.

"Adulterates."—This word is not defined. Under the Dutch Penal Code (330) food, drink, or drugs are said to be adulterated or falsified when their value or quality is diminished by the addition of foreign substances. The Hungarian Code (314) uses the words "substances harmful to health." To sell articles of food, mixed with substances dangerous to life or harmful to health, without making known such dangerous or harmful properties, is punishable with five to ten years' imprisonment. If death or grievous bodily harm results, and the act does not amount to murder, the punishment is ten to fifteen years' imprisonment.—*Id.*, 315.

A special Act dealing with adulteration has become a necessity in India. In England any Medical Officer of Health, Inspector of Nuisances, or Inspector of Weights and Measures, or any Inspector of a market, or any Police Constable under the direction of such officer, may procure any sample of food or drugs, and if he suspect the same to have been sold to him contrary to any provision of the Act, shall submit the same to be analysed.—38 and 39 Vict., c. 63, s. 13. It is no defence to allege that the purchaser having bought for analysis only was not prejudiced by such sale, nor is it a defence to prove that the article was not defective in all three respects—nature, substance, and quality.—42 and 43 Vict., c. 30, s. 2. Any of the above officers may also procure at the place of delivery any sample of any milk in the course of delivery to the purchaser or consignee in pursuance of any contract for the sale to such purchaser or consignee of such milk.—*Id.*, s. 3. As to powers of Medical Officers of Health and Inspectors of Nuisances. See 38 and 39 Vict., c. 55, s. 85.

Section 273.

The provision refers only to articles of food or drink. The Danish Penal Code (290) has a useful provision, penalising the use of poison-

ous or dangerous substances in the manufacture of goods, in such a way as to endanger the health of those who use the goods. Those who knowingly sell such goods are also punishable. If such acts are committed from negligence, the punishment is fine only.

Section 279.

Rash Driving or Riding.

As regards civil cases, Mr. Pollock remarks: "Nothing can be inferred from the bare fact that a foot-passenger is knocked down by a carriage in a place where they have an equal right to be, or by a train at a level-crossing. Those who pass and repass in frequented roads are bound to use due care, be it on foot or on horse-back, or with carriages; and before one can complain of another, he must show wherein care was wanting."—Pollock, Torts, 360. But the general principle has to be modified where there is a relation of contract between the parties, and (it should seem) when there is a personal undertaking without a contract . . . . If a man has undertaken, whether for reward or not, to do something requiring special skill, he may fairly be called upon, if things go wrong, to prove his competence: though if he is a competent man, the mere fact of a mishap (being of a kind that even a competent person is exposed to) would of itself be no evidence of negligence. Where special duties of safe keeping or repair are imposed by the policy of the law, the fact of an accident happening is held in the same manner to cast the burden of proving diligence on the person who is answerable for it, or in other words, raises a presumption of negligence.

"If a man driving sees that a blind man, an aged man, or a cripple is crossing the road ahead, he must govern his course and speed accordingly. He will not discharge himself, in the event of a mishap, merely by showing that a young and active man would have come to no harm. . . . These propositions are not supported by any distinct authority in our law that I know of, but they seem to follow from admitted principles. In the United States there is some authority.—Wharton, 307, 310; Cooley on Torts, 683." Pollock, Torts 373.

Section 283.

Where an excavation was so close to the public way as to make it unsafe to persons using it with ordinary care, it was held to amount to a public nuisance, "even though the danger consisted in the risk of accidentally deviating from the road"—*Barnes* v. *Ward*, 9 C. B., 392.

Section 285.

"The risk incident to dealing with fire, firearms, explosive or highly inflammable matters, corrosive or otherwise dangerous or noxious fluids, and (it is apprehended) poisons, is accounted by the common law among those which subject the actor to strict responsibility. Sometimes the term "consummate care" is used to describe the amount of caution required: but it is doubtful whether even this be strong enough. . . . In the 15th century it is stated to be the custom of the realm that every man must safely keep his own fire so that no damage in any wise happen to his neighbour.—Y. B. 2 Hen. IV., 18. . . . Liability for domestic fires has been dealt with by statute, and a man is not now answerable for damage done

by a fire which began in his house or on his land by accident and without negligence.—14 Geo. III., c. 78, s. 86. The use of fire for other than domestic purposes remains a ground of the strictest responsibility.—Pollock, Torts, 407.

Reckless omission to use care, after notice of the risk, may be held, as a matter of fact, to prove a mischievous intention: or, in the terms of Roman law, *culpa lata* may be equivalent to *dolus*. As regards negligence generally, Mr. Pollock has a very good passage on the standard of prudence in his recent work on Torts. The standard is, the foresight and caution of the average prudent man or reasonable man. Compare the Aristotelian use of ὁ φρόνιμος or ὁ σπουδαῖος in determining the standard of moral duty. In the case of *Vaughan* v. *Menlove* (3 Bing. N. C., 468), the action was against an occupier who had built a rick of hay on the verge of his own land in such a state that there was evident danger of fire, and left it there after repeated warning. The hay rick did heat, broke into flame, and set fire to buildings, which in turn communicated the fire to the plaintiff's cottages. It was finally laid down that the care of a prudent man was the accustomed and the proper measure of duty Tindal, C. J., remarked: "Instead of saying that the liability for negligence should be co-extensive with the judgment of each individual—which would be as variable as the length of the foot of each individual—we ought rather to adhere to the rule which requires in all cases a regard to caution such as a man of ordinary prudence would observe." Quite lately, the same principle has been enforced in the Supreme Court of Massachusetts. "If a man's conduct is such as would be reckless in a man of ordinary prudence, it is reckless in him. Unless he can bring himself within some broadly-defined exception to general rules, the law deliberately leaves his personal equation or idioscyncrasies out of account, and peremptorily assumes that he has as much capacity to judge and to foresee consequences as a man of ordinary prudence would have in the same situation."—*Commonwealth* v. *Pierce*, 138 Mass. 165. Pollock, Torts, 357. In criminal cases the fact that an accused is a person of weak intellect is a ground for reduction of punishment.

Section 287.

There is a presumption of negligence when the cause of the mischief was apparently under the control of the defendant or his servants. The rule was declared by the Exchequer Chamber in 1865 in the following terms: "There must be reasonable evidence of negligence. But where the thing is shown to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care."—*Scott* v. *London Dock Co.*, 3 H. and C., 596.

Section 288.

Where damage is done by the falling of objects into a highway from a building, the modern rule is that the accident, in the absence of explanation, is of itself evidence of negligence.—*Res ipsa loquitur*. In other words, the burden of disproving negligence is on the occupier of the building. In the case of *Byrne* v. *Boodle* (2 H. and C. 722),

Pollock, C. B., said: "So in the building or repairing a house, or putting pots on the chimneys, if a person passing along the road is injured by something falling upon him, I think the accident alone would be *primâ facie* evidence of negligence." See also *Kearney* v. *L. B. and S. C. Railway Co.*, L. R., 6 Q. B., 759, a decision which has been followed in New York in the stronger case of a whole building falling into the street. "Buildings properly constructed do not fall without adequate cause."—57 N. Y., 567. From the above cases it is clear that the owner of property abutting on a highway is under a positive duty to keep his property from being a cause of danger to the public by reason of any defect either in structure, repair, or use and management, which reasonable skill and care can guard against.—Pollock, Torts, 421, *seq.*

Under the Prusian Penal Code architects who, in the erection of a building, endanger the lives of persons entering or passing by negligence or ignorance of the rules of their profession, are punished with imprisonment from six weeks to six months, or a fine of from 50 to 300 thalers. In case of repetition they may be deprived of the right of exercising their profession.—Pt. ii., ch. 16.

Section 289.

"Knowingly *or* negligently." The proof of the *scienter*, as it was called in English pleadings, was often far more difficult than proof of negligence. As regards injury to cattle or sheep, it has been done away with by statute; and the occupier of the place where a dog is kept is presumed for this purpose to be the owner of the dog.—28 and 29 Vict., c. 60. There is a similar Act for Scotland.—26 and 27 Vict., c. 100. Further protection against mischievous or masterless dogs is given by 34 and 35 Vict., c. 56.—Pollock, Torts, 406.

Section 290.

"No particular combination of sources of annoyance," says Mr. Pollock, "is necessary to constitute a nuisance, nor are the possible sources of annoyance exhaustively defined by any rule of law. Smoke, unaccompanied with noise or noxious vapour, noise alone, offensive vapours alone, although not injurious to health, may severally constitute a nuisance to the owner of adjoining or neighbouring property. The persistent ringing and tolling of large bells, the loud music, shouting, and other noises attending the performances of a circus, the collection of a crowd of disorderly people by a noisy entertainment of music and fireworks, to the grave annoyance of dwellers in the neighbourhood, have all been held to be nuisances and restrained by the authority of the Court."—Pollock, Torts, 334, and cases there cited.

Section 290.

Simple nuisance is punishable by fine only, and therefore there is little or no hardship in holding a master responsible for the acts of a servant. It has been held in England that an owner may be convicted of a nuisance, resulting from the mode of carrying on the business, although such nuisance was committed in opposition to his orders, and without his knowledge, the proceedings by indictment in such case being criminal in form only.—*R.* v. *Stephens*, 1 L. R., Q. B., 702.

A corporation aggregate may be guilty of a misdemeanour by non-feasance, such as the non-repair of bridges which it is their duty to repair.—*R.* v. *Birmingham and Gloucester Railway Co.*, 3 Q. B., 223. In such a case an indictment is maintainable against it in its corporate name. See also 9 Q. B., 315.

It is no defence to a prosecution for nuisance that the act is a lawful one, and that it was done upon the defendant's own land, and in a convenient place for the purpose, if in fact it amounts to a nuisance.—10 B. L. R., 241. See *Cavey* v. *Lidbetter*, 32 L. J., C. P., 104.

Section 292.

The prosecution in the case of *R.* v. *Hicklin* was in respect of a book called "The Comfessional Unmasked." It was held that if the tendency of a book is to deprave and corrupt those whose minds are open to immoral influences, the motive or object with which it has been written will not excuse the publication. This view was also taken in the case of *Steele* v. *Brannan*, L. R., 7 C. P., 261. See also *Bradlaugh* v. *The Queen*, 2 Q. B., 569.

In the case of *Harring* v. *Watson*, it was held to be a misdemeanour to exhibit for money, to all comers, an unnatural and monstrous birth.—1 Russ. Cr. (5th Ed.), 436.

In the Austrian Penal Code, misdemeanours and contraventions against public decency include a number of miscellaneous acts, not only publication or circulation of indecent pictures or prints, but also begging, drunkenness, pandering, adultery, dishonouring, by an inmate of the house, of the daughter or relations of the head of the family; seduction by a maid-servant of the minor son of her master; seduction of a person under promise of marriage; professional prostitution of a married woman, and profiting by the same, on the part of the husband.

Section 296.

Offences against Religion.

Any person making any disturbance in any church, chapel, or churchyard may be immediately apprehended by any churchwarden or constable and taken before a justice.—23 and 24 Vict., c. 32, s. 3; 43 and 44 Vict., c. 41, s. 8. Churchwardens may pull off a man's hat irreverently worn.—1 Hawk., P. C., c. 63, s. 29.

Section 297.

Every person is by the common law entitled to burial in the churchyard of the parish in which he died without any fee, unless there be a custom to pay such fee. If the minister refuse to allow the burial, it may be enforced by mandamus, and an indictment will also lie against him on account of the inconvenience of keeping the corpse unburied.—*R.* v. *Taylor*, 7 Davy, 278 MS.; *R.* v. *Coleridge*, 2 B. and A., 806.

Section 298.

"Or places any object in the sight of that person." In 1888 a Magistrate in the N. W. Provinces convicted some Mahomedans under this section for having killed a cow in full view of the public road. The Allahabad High Court upset the conviction, holding that a cow was not such an object as is contemplated by the section.

Article 191 of the Hungarian Penal Code makes it an offence punishable with fine and six months' imprisonment to insult an object of religious worship or objects used in the performance of divine service in a place of divine worship or in any place during divine worship. Causing a public scandal by using outrageous expressions against the deity is punishable with a year's imprisonment.—*Id.*, 190. Publicly blaspheming God or insulting any Christian cult or religious society is in Germany punishable with three years' imprisonment.—P. C., 166. So in Denmark, where it is also an offence to deride or treat with contempt the dogmas or worship of any religious community in the country.—P. C., 156.

Section 299.

Homicide.

Sir James Stephen appears from his Criminal Digest to be uncertain whether homicide by simple omission is made punishable by the criminal laws of any country. See notes under s. 299. By s. 32 P. C. words which extend to acts done extend also to illegal omissions; but the omission to inform a blind man that he is walking towards a precipice cannot be called an illegal omission. See definition of illegal, s. 43. The difficulty has been felt by framers of the most recent Criminal Codes. By art. 450 of the Dutch Penal Code, "he who, seeing another person suddenly threatened with the danger of death, omits to give or furnish him with assistance which he can give or procure without any reasonable fear of danger for himself or others, is punished, if the death of the person in distress has resulted, with detention for 3 months and a fine of 300 florins. In such a case the Russian Code imposes ecclesiastical penance. —P. C., 1521, 1522.

When an injury was inflicted on a person by a blow which, in the judgment of a competent medical man, rendered an operation advisable, and, as a preliminary to the operation, chloroform was administered to the patient, who died during its administration, and it was agreed that the patient would not have died but for its administration: *Held*, that the person causing the injury was liable to be indicted for manslaughter.—*R.* v. *Davis*, 15 Cox, C. C., 174.

Expln. 2.

So where a wound was wilfully inflicted, and ultimately became the cause of death, the party who inflicted it is guilty of murder, though life might have been preserved, if the deceased had not refused to submit to a surgical operation.—*R.* v. *Holland*, 2 M. & Rob., 351.

Expln. 3.

The law contained in this explanation appears to be different from the English law.—*R.* v. *Sellis*, 7 C. and P., 830; *R.* v. *Weight*, 9 C. and P., 754; *R.* v. *Handley*, 13 Cox C. C., 79.

Section 300.

He who kills another at his request or command is, in the judgment of the law, as much a murderer as if he had done it merely of his own head.—*R.* v. *Sawyer*, 1 Russ., C. & M., 670.

Forcing a person to do an act which is likely to produce his death, and which does produce it, is murder.—*R.* v. *Evans*, 1 Russ. C. & M., 676. Threats may constitute such force. A person cannot be indicted for murder in procuring another to be executed by falsely charging him with a crime of which he was innocent.—*R.* v. *Macdaniel*, 1 East, P. C., 33.

Excep. 5.

In India duelling resulting in death seems to be culpable homicide not amounting to murder. In Germany duelling is punishable with from three months to five years in a fortress; if death occurs, two years is the minimum; if death of one of the duellists must have happened, three years. A duel without seconds is heavily punished. Intermediaries who have seriously tried to prevent the duel, seconds, witnesses, and surgeons, are exempt from punishment.—P. C., 201—210. In Holland he who excites others to a duel, or reproaches anyone for having refused a challenge, is punishable with six or four months' imprisonment.—Cf. Russ. P. C., 1512. The duellist, who does not wound his adversary, is punishable with six months; if he wounds, one year: if the wound be grievous, three years: if he kills his adversary, six years: if it be a duel to death, 12 years. The law regarding homicide applies, if the conditions are not settled beforehand, or if the duel does not take place in the presence of witnesses, or in case of fraud. In these cases witnesses also, but not doctors, are punishable.—P. C., 152—156. In Denmark the punishment for a duel is simple imprisonment: if death or grave wounds are caused, the minimum punishment must be three months: if it is a duel to death, five years. The general law is applied, if the rules of the duel, or the conditions agreed on are broken.—P. C., 208, 209. The law in Hungary is much the same as that in Holland.—P. C., 293—300.

Section 302.

In England a man is guilty of murder, if having agreed with another man that they should both commit suicide, he survives the attempt, while the other man perishes.—*R.* v. *Dyson*, R. & R., 523, and a more recent case in 1886 or 1887. I believe this act would not amount to murder in any other country. Again, if a man is killed at his own request by the hand of another, the latter is deemed a murderer, and is liable to the full penalty of the law. Modern Codes specially deal with such a case. A man is ill and knows he cannot recover; tortured with agonizing pains, he may linger on for months, and he asks a relative to mix some swift and painless poison in his food or drink. Is the relative, who complies with such a request, earnestly made and repeated with solemn adjurations, to be placed in the same category as the murderer? The criminal jurists of Austria-Hungary deem three years' seclusion to be a sufficient maximum punishment for the act: in Holland, the maximum is 12 years.—Hung. P. C., 282; Dutch P. C., 293.

Section 304.

The causing of death by the grossly unskilful, or the grossly incautious use of a dangerous instrument, may be manslaughter.—*R.* v. *Spilling*, 2 M. & Rob., 107. An unskilled practitioner who ventures to prescribe dangerous medicines, of the use of which he is ignorant, shews culpable rashness, for which he will be responsible.—

R. v. *Markuss*, 4 F. & F., 356. There must be a competent knowledge and care in dealing with a dangerous drug.—*R.* v. *Chamberlain*, 10 Cox, C. C., 486.

Section 304A.

The law imposes upon relieving officers in England the duty and obligation, in cases where *bonâ fide* applications are made to them for medical assistance by destitute persons in cases of sudden and urgent necessity, to give such assistance promptly, so that the mischief may be dealt with at an early stage. If such an application be made, and death or bodily harm results from a refusal to grant such assistance, it is no answer to an indictment against the relieving officer for manslaughter or for causing bodily harm that the applicant was in employment for wages or other hire or remuneration, if at the time of the application, the applicant was in fact, destitute of the means of providing independent medical assistance.—*R.* v. *Curtis*, 15 Cox, C. C., 746.

In Hungary he who causes the death of another by negligence, commits the delict of homicide, as opposed to the crime of assassination, and is punishable with a maximum of three years' imprisonment; a fine of 2,000 florins in addition can be imposed, where the death has been caused by inexperience or negligence of the offender in the exercise of his profession or occupation or by non-observance of rules relating thereto.—Hung. P. C., 290, 291.

Section 306.

In Hungary any incitement to the commission of suicide, or procuration of the means therefor, is punishable with only three years' imprisonment, and that only if the suicide takes place, or is actually attempted. In England the adviser is guilty of murder, suicide being considered as the murder of one of the sovereign's subjects. The Hungarian Penal Code (283) contains a curious provision dealing with the case of two persons agreeing to decide by lot or chance, which of them shall kill himself. This is called American suicide. If, in the execution of such agreement, an act tending to suicide has been committed, both are liable to imprisonment in a State prison for from one to five years; if death has resulted, the survivor is liable to such imprisonment for from five to ten years.

Section 312.

The Hungarian Penal Code distinguishes between the married and the unmarried woman who commits abortion; in the latter case the punishment is only two years' imprisonment (instead of three years).—Hung. P. C., 285. This is a reasonable distinction, as the motive for the commission of the offence is far greater in the one case than in the other. A widow or *divorcée*, married at the time she became *enceinte*, is liable to the higher punishment.

Section 317.

Continental criminalists are merciful to the mother who kills her illegitimate child at the moment of its birth, or shortly afterwards. In Holland, this mercy is shewn only if the killing has proceeded from a fear lest the *accouchement* might be discovered.—Dutch P. C., 290. Under the Prussian Code the punishment was from five to twenty years.—Pt. ii., ch. 15.

Keeping or abandoning in a state of distress a person whom one is bound to maintain or care for is punishable with two years' imprisonment.—Dutch P. C., 255. If the child exposed or abandoned be under seven years of age, the imprisonment is four years and six months.—*Id.*, 256.

Section 318.

Under the Prussian Penal Code the exposure of a child under seven years, or an infirm person, or the abandonment of such persons by those who are entrusted with their care, was punished with imprisonment of not less than three months, and hard labour not exceeding ten years, in case death ensued from it.—Pt. ii., ch. 15.

In Scotland concealment of pregnancy may be an offence, 49 Geo. III., c. 14; that is, when a woman, whether married or unmarried, conceals her condition during the whole period of pregnancy, and does not call for and use assistance in the birth, and the child be found dead, or be not found at all.—Hume i., 298; Alison i., 157.

Section 320.

By the Dutch Penal Code grievous bodily hurt includes maladies, which cannot be permanently healed, permanent incapacity to exercise one's profession, and causing miscarriage. It also includes "mental trouble" lasting more than a month.—P. C., 82.

Section 321.

What about self-mutilation? See notes under s. 321. The German Penal Code (142) punishes with a minimum of one year's imprisonment the man who, subject to military service, mutilates himself in such a way as to render himself unfit for such service, and also the man who mutilates another at his request. The Code of a less military nation imposes a maximum punishment of one year's hard labour in a house of correction, even when the act is committed in a time of war, or when the country is threatened with war.—Den. P. C., 78. In Hungary the punishment is three years' imprisonment and a fine of 2,000 florins.—Hung. P. C., 451. The words in the Hungarian Code are "mutilates or renders unfit for military service."

Section 323.

In Hungary there can be no prosecution for simple hurt except on the complaint of the person injured. The law also enacts that it is not necessary to pronounce any punishment, when slight hurt is caused by a person who has the right of domestic correction, and who causes the hurt in the exercise of such right.—P. C., 312, 313.

Section 337.

In England it is a misdemeanour to refuse or neglect to provide sufficient food or other necessaries for any infant of tender years, unable to provide for and take care of itself (whether such infant is a child, an apprentice, or a servant whom the party is obliged by duty or contract to provide for) so as thereby to injure his health.—*R.* v. *Friend*, R. & R., C. C., 20; *R.* v. *Squire*, 1 Russ. C. & M., 678. If death ensues, the act may be manslaughter. If the neglect is culpable only, and not malicious, it would be manslaughter. But if it be wilful, and with an intention to cause the death of the child

or to do it some grievous injury, and the child dies in consequence of such neglect, the act is murder.—*R.* v. *Bubb*, 4 Cox, C. C., 455; also *R.* v. *Mabbett*, 5 Cox, C. C., 339. See under s. 304A.

Section 334.

See also s. 358. The provocation must probably be recent. Where there is a written and published libel or the like, it has been held in Scotland that several days may elapse between the publication and the assault, and the provocation be still held recent.—Macdon, 155.

Section 350.

Held, in England, that an examination by medical men, in pursuance of an order of a Magistrate, of the person of a female in custody upon the charge of concealing the birth of her illegitimate child, amounted to an assault.—*Agnew* v. *Jobson*.—14 Cox, C. C., 625. Also riding after a person and obliging him to run away into a garden to avoid being beaten.—*Martin* v. *Shoppee*, 3 C. & P., 373.

Section 351.

Assaults.

Though assault strictly means an inchoate battery, the word is in modern usage constantly made to include battery. No reason appears for maintaining the distinction of terms in our modern practice: and in the draft Criminal Code of 1879 "assault" is deliberately used in the larger popular sense.—Pollock, Torts, 183. It may be an assault to present an unloaded fire-arm, or even, it is apprehended, anything that looks like a fire-arm.—*R.* v. *James*, 1 C. & K., 530, is apparently to the contrary; but the opinion of Parke, B., in *R.* v. *St. George* (9 C. & P., 483, 493), would almost certainly be followed at this day.—*Ibid.*, 184.

In England putting a child into a bag and leaving the bag hanging from some palings, is an assault.—*R.* v. *March*, 1 C. & K., 496. This would be criminal force in India. To detain a child at a board school, after the regular school-hours, has been punished as an assault.—*Hunter* v. *Johnson*, 53 L. J. (M. C.), 182. This act in India would be wrongful confinement, if the child were confined within certain circumscribing limits (s. 340); otherwise, it would be merely wrongful restraint (s. 339). Aggravated assaults in England are those on persons protecting wreck, with intent to commit felony, on peace officers, or clergymen, indecent assaults on females.—24 and 25 Vict., c. 100, ss. 37, 38, 52, 36.

Section 353.

A person making a *bonâ fide* claim of right to be present as one of the public in a law Court at the hearing of a suit, is not justified in committing an assault upon a police constable and an official who endeavour to remove him. Such a claim of right does not oust the jurisdiction of the Magistrate who has to try the charge of assault, and he may refuse to allow cross-examination and to admit evidence in respect of such a claim.—*R.* v. *Eardley*, 49 J. P., 551—D.

As regards the offence of deforcement, it has been held in Scotland that, if the warrant be regular, informality in the proceedings from which it has its origin is of no consequence.—Macdon, 212.

Section 362.

Kidnapping and Abduction

The prisoner, being indicted under the 24 and 25 Vict., c. 100, s. 56, for that she did, feloniously and unlawfully, by fraud detain a child, under the age of fourteen, with intent to deprive the mother of the possession of her—the evidence being that the child had been in the service of the prisoner, and was missing and could not be discovered; and that she gave different accounts of what had become of the child, but implying that the prisoner had given her up to some third persons; and there being no evidence that the child was still in her actual custody, nor, indeed, any evidence where she was: *Held*, that, upon the principle of *Jones* v. *Dowle* (9 M. & W., 19), the prisoner was rightly convicted, she having unlawfully detained the child by fraud.—*R.* v. *Johnson*, 15 Cox, C. C., 481.

Section 366.

See s. 551, C. P. C. The English common law provided a remedy by writ of trespass for the actual taking away of a wife, servant, or heir, and perhaps younger child also. Black., III., 139. The writ was *de uxore abductâ cum bonis viri sui*, or an ordinary writ of trespass; a case as late as the Restoration is mentioned in Bac. Abr. V., 328 (Ed. 1832). An action of trespass also lay for wrongs done to the plaintiff's wife or servant, whereby he lost the society of the former or the services of the latter—*per quod consortium* or *servitium amisit*. Much later the experiment was tried with success of a husband bringing an action "against such as persuade and entice the wife to live separate from him without a sufficient cause."—Black., III., 139; Bigelow, L. C., 328. Still later the action for enticing away a servant was turned to the purpose for which alone it may be said to survive, that of punishing seducers; for the latitude allowed in estimating damages makes the proceeding in substance almost a penal one.—Pollock, Torts, 198.

Neither in England nor India is seduction *per se* a criminal offence. See under s. 366. Seduction under promise of marriage would in India fall within the definition of cheating (s. 415), but it would not be covered by s. 3 (2) of the Criminal Law Amendment Act (48 and 49 Vict., c. 69), as in England false pretences and false representations must relate to some existing fact, and not to the performance of an act in the future. In Germany, the seduction of a chaste girl under 16 is punishable with one year's imprisonment; no promise of any sort is necessary, but there can only be a prosecution on the complaint of the parents or guardians.—P. C., 182. See Pruss. P. C., Part ii., ch. 12. The Hungarian Penal Code uses the words "young respectable girl," and the age is reduced to 14, while the maximum imprisonment is five years.—Hung. P. C., 236. Seduction is not necessary, the mere act being an offence. The Danish law requires that the girl should be more than 12 and under 16 years of age; and there can be no prosecution except on the complaint of parents or guardians. It differs from the Hungarian law in requiring "seduction." On this point the Dutch Code is the same as the law in Hungary, but two periods are named, the maximum imprisonment being 12 years, if the girl be under 12 years of age, and eight years if she be more than 12 and under 16; in the latter case private sanction

is necessary for a prosecution.—Dutch P. C., 244, 245. The criminal law Amendment Act has omitted to penalise seduction under promise of marriage (very rife among the lower classes), while the provision that the mere act of connexion with a girl under 16 years of age, though of known immoral character, has ludicrously overstepped the bounds of sound and reasonable legislation.

The Dutch Code of Contraventions (452) contains a provision that is called for in England. The keeper of a brothel is punishable with three months' imprisonment and fine, if he admits into his house a woman not belonging to his own family, without having first distinctly informed her in the presence of the Burgomaster of the calling which is carried on therein.

Section 373.

It has been suggested that the word "keeps" or "retains" should be added after the word "obtains" in this section.

Section 374.

In Madras Act I of 1858 makes lawful compulsory labour for the prevention of mischief by inundation. Heads of villages are empowered to call on all able bodied male persons of the labouring classes to repair embankments, &c. A similar power is given in Northern India by Act VIII of 1873, ss. 63—66, when the work is necessary to prevent sudden and extensive public injury. As to Burma, see Act XIII, 1877, ss. 1—6. Bengal Regulation XI of 1806 provides for furnishing aid to troops on the march, and to private travellers.

Section 375.

Rape.

"Without her consent." To have carnal intercourse with a woman, when she has swooned away or is unconscious, is punishable with eight years' imprisonment; so also by violence or threats of violence to force a person to commit or undergo acts of immorality.—Dutch P. C., 243, 246. To excite a person under 16 to have carnal intercourse with a third person is punishable with six years' imprisonment.—*Id.*, 247. To deceive a woman by pretending to be her husband, and so to have carnal intercourse with her, is punishable with three years' reclusion.—Hung. P. C., 245.

Section 377.

The crime against nature is punishable in Hungary with only one year's imprisonment.—P. C., 241.

Section 378.

Theft.

In England it is an old rule of law that the innocent receipt of a chattel, coupled with its subsequent fraudulent appropriation, does not amount to larceny. This rule apparently was not affected by the decision in *R.* v. *Ashwell*, which case was distinguished and discussed in *R.* v. *Flowers*, 16 Q. B. D., 643. In the former case the prisoner asked the prosecutor for the loan of a shilling. Prosecutor gave a shilling by mistake, and at the time prisoner also thought it was a shilling. He afterwards discovered it was a sovereign and fraudu-

lently appropriated it to his own use. He was convicted of larceny of the sovereign: *Held*, that the prisoner had not been guilty of larceny as a bailee; but the Court being equally divided as to whether the prisoner had been guilty of larceny at common law, the conviction stood.—*R.* v. *Ashwell*, 16 Q. B. D., 190. This would be criminal misappropriation in India, and the fact that the time of 14 Judges was taken up for a whole day in deciding such a point shows the urgent need for reform of the English criminal law. It is very hard on the tax-payers that the time of highly-paid Judges should be taken up in discussing points which the legislature might simplify by a stroke of the pen.

The English common law regarding larceny is replete with anomalies and absurdities. Animals which do not serve for food, as dogs, bears, and foxes, are not the subject of larceny, though they may be recovered in a civil action; neither are beasts *ferœ naturœ* and unreclaimed. But animals which are reclaimed, and which are *practically under the dominion of any person*, and may serve for food, may be the subjects of larceny. Sir James Stephen has pointed out the absurdity of its being larceny to steal a dog's collar, worth perhaps a shilling, and yet not larceny to steal the dog, worth perhaps many pounds. From the writings of Coke, Hawkins, Hale, East, Dalton, and Blackstone, it appears that the following animals are not the subject of larceny, namely, dogs, cats, bears, foxes, apes, monkeys, pole-cats, squirrels, and singing-birds. The following animals, when reclaimed, have been declared to be the subjects of larceny, namely, pigeons and doves, hares, conies, deer, swans, wild boars, cranes, pheasants, partridges, fish, and oysters. Animals are reclaimed, when they are so placed or situated, that they can be caught at pleasure. It has been made a statutory offence in England (24 and 25 Vict., c. 96, s. 24), to unlawfully and wilfully take fish in any water adjoining or belonging to the dwelling-house of the owner of such water, or in any water not so situated, but which is private property, or in which there is any private right of fishery. The younger Nerva has laid down the following test of the possession of moveables: "res mobiles, excepto homine, quatenus sub custodiâ nostrâ sint, hactenus possideri: idem *quatenus, si velimus, naturalem possessionem nancisci possimus.*" Both Papinian and Nerva state that a man who conceals a thing in his house, or buries money in his grounds, does not lose the possession by not being able immediately to find it; and it has even been held that a man, who leaves a thing behind him in a forest, and afterwards recollects exactly where it is, in no way loses his possession, the reason being, in the words of Nerva, that possession is founded not only on actual *custodia*, but also on *quasi-custodia*, on the mere power of the possessor to obtain the natural detention, *whenever he chooses.*

Holmes says: "Until escape has been made impossible by some means, another may step in and kill or catch and carry off the game if he can.....The Court of Queen's Bench went so far as to decide, notwithstanding a verdict the other way, that when fish were nearly surrounded by a seine, with an opening of seven fathoms between the ends, at which point boats were stationed to frighten them from escaping, they were not reduced to possession as against a stranger who rowed in through the opening and helped himself."—*Young* v. *Hichens*, 6 Q. B., 606.

The framers of the Penal Code say: "It is impossible for us to be certain that we have made proper penal provisions for violations

of civil rights till we have a complete knowledge of all civil rights. A, without Z's permission, shoots snipes on Z's ground, and carries them away; here, if the law of civil rights grants the property in such birds to any person who can catch them, A has not, by killing them and carrying them away, invaded Z's right of property. If, on the other hand, the law of civil right declares such birds the property of the person on whose lands they are, A has invaded Z's right of property. If it be matter of doubt what the state of the civil law on the subject is, it must also be matter of doubt whether A has wronged Z, or not."

There may be theft of fish from an enclosed piece of water, but not from a river, creek, or a large irrigation-tank with an outlet. See I. L. R., 5 Mad., 390. The test is whether the fish are restrained of natural liberty so that the owner can catch them when he wishes to. See I. L. R., 10 Bom., 193, and 20 W. R., Cr., 15.

To constitute larceny it is necessary that the party should have had an intention to deprive the owner of his property permanently.—R. v. *Holloway*, 2 C. & K., 942. See also *R.* v. *Guernsey*, 1 F. and F., 394. Such an intention does not appear to be necessary in India.

It is the law in Scotland—and the English law is the same—that if a person takes a thing in the belief that what he is taking is his own, or that he is taking it with the owner's concurrence, he is not guilty of theft; but his belief must be *bonâ fide* and reasonable, and he must prove it. It has not been decided that a wife cannot steal from her husband. A husband has been held properly charged with theft of proceeds of a bond, his right to which was excluded by ante-nuptial contract.—Macdon, 21.

Macdonald remarks that there may be theft though the owner, or those who are looking after the property, are aware that a theft is being committed. A person who suspects that things are being stolen, may watch the supposed delinquent, or even employ another to obtain the confidence of the thief, pretending to join in his scheme of plunder, and so secure proof of guilt. Police-officers, when they see a theft about to be committed, often wait until it has been committed, but it has never been maintained that the offence on that ground ceases to be theft.—Macdon., 22.

In a case in Scotland, where fishermen, who were entitled to get mussels from a bed at a reasonable rate, took mussels without leave, alleging that the price demanded was exorbitant, they were held properly convicted of theft.—Macdon., 20. It is not necessary that the prosecution should be able to name any particular person as owner.—*Ibid. Quære.*—Must the prosecution prove that the things were taken from the *possession* of some particular persons? The Mugheya Domes are a thieving low-caste tribe, and they are often found in possession of articles of luxury which they must have obtained by theft. Would not a Magistrate be justified in calling on them to show that they came honestly by the articles, and in convicting them, if they failed to do so?

A claim set up by a prisoner to property which is alleged to be stolen or criminally misappropiated, does not oust a Magistrate of his jurisdiction, unless the claim be *bonâ fide* raised.—Kyshe, S. S. Rep., iii., 134.

The definition of theft in the French Code (379) is "whoever fraudulently takes a thing which does not belong to him." This definition is supplemented by a ruling of the Court of Cassation that

the taking must be against the will of the owner. Cass, 7th January 1864. Instead of "fraudulently" the German Code has "with the object of unlawfully appropriating it."—P. C., 242. The definition in the Hungarian Penal Code (333) is the most complete: "whoever takes a moveable thing belonging to another, without his consent, from him who has the possession or detention of it, with the object of unlawfully appropriating it." Compare Dutch P. C., 310. The words "out of the possession of" have been strictly construed by Indian Judges. It has even been held that there can be no theft of fish from a tank with an outlet through which fish may escape.

Thefts as between married persons, brothers and sisters, ascendants and descendants, by pupils from masters, minors from guardians, can only be prosecuted on the complaint of the person aggrieved. Fr. P. C., 380; Hung. P. C., 342. Compare Dutch P. C., 316. The German Penal Code (247) has a similar rule; but it is necessary that the property stolen should be of small value. In Denmark the maximum punishment is Rs. 50 fine or one month's simple imprisonment, if the insignificant value of the object taken, together with its nature and the circumstances of the taking, make the act less culpable than an ordinary theft, as when one takes fruit from a garden, or articles of food or drink, and consumes them immediately. In such a case only the person aggrieved can prosecute.—Den. P. C., 235. So when one illegally takes the property of another person, without any intention of appropriating it, but only to use it for a definite object.—*Id.*, 623. In Germany, it is a contravention, punishable with imprisonment or a fine of 150 marks, to steal, in order to consume immediately, things, drinkables, or eatables of an insignificant value or of a very small quantity.—P. C., 370 (5).

Section 391.

Piracy is defined by text writers to be the offence of depredating on the seas, without being authorized by any Sovereign State, or with commissions from different Sovereigns at war with each other. "Piracy," said Sir Charles Hedges, in 1696, "is a robbery committed within the jurisdiction of the Admiralty."—*R.* v. *Dawson*, 13 St. T., 454, approved in *Att.-General for Hong-Kong* v. *Kwok-a-Sing*, L. R., 5 P. C., 199. In the case of *the Magellan pirates*, Dr. Lushington said, "all persons are held to be pirates who are guilty of piratical acts; and piratical acts are robbery and murder on the high seas.—Phillimore, i., 424. An offence committed on the high seas is not piracy *jure gentium*, so long as the ship on which it is committed remains subject to the authority of the State to which it belongs. A chief ingredient of piracy is throwing off this authority.—Wheaton, 167.

Section 403.

Criminal Misappropriation.

See notes under s. 403. The opening or reading a letter addressed to another does not appear to be a criminal offence in England or India. In New York any person who wilfully and without authority either (1) opens *or reads*, or causes to be opened or read; or (2) publishes the whole, or any portion of such a letter or telegram, knowing it to have been opened or read without authority, is guilty of a misdemeanour.—N. Y. P. C., 642. The Hungarian Code punishes with eight days' imprisonment and a fine of 100 florins the act of

knowingly and without authority opening a letter, a sealed writing, or a telegram addressed to another, as well as the getting possession of a letter or telegram addressed to another person (even though not closed) in order to know the contents; and if a secret found out in this manner is published or used, in order to harm the sender or receiver of the letter, the punishment is three months' imprisonment and a fine of 1,000 florins. But there can be no prosecution except on the complaint of the person aggrieved.—Hung. P. C., 327. The Dutch Penal Code punishes with a year's imprisonment any person who diverts from its destination, opens, or damages, a letter or document deposited in a postal or telegraph office or in a pillar-box; but the opening of a letter which has been delivered, is not made penal.—Dutch P. C., 201.

English law makes the king owner of most unclaimed property; but it still recognizes a free right of occupancy for certain moveables.—Blackst, i.. 8; ii., 16, 26. French law is like the English. It states the general principle, "Les biens qui n'ont pas de maitre, appartiennent à l'état." Code Civ., 713. Compare arts. 539, 723, 768. Austrian law adopts the view that things without owner may be freely appropriated.—Austrian Code, 381. The only cases in which a party finding a chattel of another can be justified in appropriating it to his own use, is where the owner cannot be found, or where it may be fairly said that the owner has abandoned it.—*R.* v. *Reed*, Cav. and M., 306. In Hungary, the offence of unlawful appropriation of a thing found is committed, if it be not restored within eight days: so discovery of ancient treasure must be notified to the authorities within eight days.—P. C., 365, 366.

By Roman law alien or citizen might occupy 'res nullius,' and become owner by the occupation "quod enim ante nullius est, id naturali ratione occupanti conceditur."—Just. Inst., ii., 1, 12. Prussian law gives the State a prior right of occupation in the case of certain unclaimed or abandoned property, especially land, cattle, &c; and no one can occupy without the State's permission. But in other things it allows a free right of occupation.—Prussian law, ii., 16, s. 1.

A partner, who dishonestly misappropriates part of the partnership property, is liable to be punished criminally under s. 403, P. C. In England also partners may be criminally liable since the Statute 31 and 32 Vict., c. 116.—Kyshe, Straits Settlements Rep., iii., 79. A cheque payable to order, but not endorsed by the payee, is 'moveable property' within the meaning of the Penal Code. It is not necessary to prove a conversion under this section.—*Id.*, iii., 86.

Section 405.

Criminal Breach of Trust.

There is a special Act in England, which facilitates proof of misappropriation. Where B, a collector in the employment of N, collected from one Sheppard £8 14*s*. 10*d*. due to N, and, having to account daily for monies received to N's cashier, gave the latter a slip of paper, on which he had written "Sheppard, on account, £5," which the cashier copied into the cash-book, believing it represented the whole amount collected by B from Sheppard: *Held*, that B was rightly convicted under s. 1 of the Falsification of Accounts Act, 1875.—*R.* v. *Butt*, 51 L. T., 607.

Quære.—Could the disclosure of the contents of official documents

come under this section? This subject is dealt with in all Continental Codes, but not in the English law or the Indian Penal Code. An "Official Secrets Bill" has this year been introduced into Parliament. As to revelation of secrets of State. See Hung. P. C., 144—147; as to Military Secrets, 455, 456; Dutch P. C., 272, 273; Den. P. C., 80, 139. In Germany, the punishment is two years' imprisonment for divulgation of secrets of State, plans of fortresses, confidential documents, &c.—P. C., 92, 300. Divulgation of professional and less important secrets is dealt with as a contravention.—*Id.*, 353a. See Fr. P. C., 378 and 80, 81. There is probably no Government in the world whose secrets are entrusted to such unsafe keeping as those of the Government of India. Everything has to be put on paper, and the Government has to employ a very cheap agency. Neither is there any means of punishing the disclosure of private secrets, though an injunction may be obtained under the Specific Relief Act I of 1877, s. 54, (h) (i) and (z).

Section 409.

"Banker, Merchant, &c. *or agent.*" At the end of a similar list the words "or other agent" are used in 24 and 25 Vict., c. 96, s. 75, and the words have been held to apply to persons whose occupation is similar to those enumerated in the section, and do not include any ordinary agent who may from time to time be intrusted with valuable securities.—16 Q. B. D., 487.

Section 411.

Receiving Stolen Property.

On an indictment for receiving goods, knowing them to have been stolen, the prisoner's account being that he had purchased them of a tradesman in the same town, other circumstances in the case tending to negative it, though the tradesman was not called for the prosecution: *Held*, that it was not necessary to call him on the part of the prosecution, there being other circumstances in the case from which the jury might fairly infer the falsehood of the prisoner's story. —*R.* v. *Ritson*, 50 L. T., 727. In a Calcutta case Wilson, J., held, that it is the duty of the prosecution to call such a witness.

"Receives stolen property." The receipt of course includes buying if there is dishonest knowledge. The Dutch Penal Code (416) uses the words "buys, takes in exchange, or in pledge, accepts as a present, or hides."—Compare German P. C., 259. The punishment is applied to the person who intentionally gets a profit from the proceeds of the sale of an object acquired by means of an offence.

Section 414.

A wife is not in the ordinary sense held guilty of reset, if she conceal property to screen her husband, without proof of active participation.—Alison i., 338; Macdon., 62.

Section 415.

It is a crime in Scotland, as in India, to obtain goods on credit, for board and lodging, with the preconceived intention not to pay for them, though no false inducement have been held out.—Macdon., 92.

In England a lodger asked to be furnished with board as well as lodging, for which he promised to pay. He was supplied with

meat and drink for some days, and he then decamped without paying. The jury were directed that they must be satisfied that the pretence was false, that it was acted on by the prosecutrix in supplying the food; and that it was made by the prisoner with intent to defraud. The jury returned a verdict of guilty, which, on a question reserved, was upheld.—*Reg.* v. *Burton*, 16 Cox, C. C., 62.

The Dutch Penal Code punishes as "fraud" with a year's imprisonment the seller who deceives the buyer of a certain and definite article by giving him some other article, or who deceives him by means of fraudulent tricks regarding the nature, quality, or quantity, of the object delivered.—P. C., 329. To buy things on credit without the intention of paying for them is fraud.—Den. P. C., 251. If a man without authorization spends a sum of money belonging to another, but has not fraudulently denied its receipt, he can only be prosecuted on complaint of the person injured, and he is not punishable if he restores the whole amount before judgment is pronounced.—*Id.*, 254. Generally speaking, if the offence of fraud or cheating is committed against a near relative, it can only be prosecuted on his or her complaint.—Dutch P. C., 338; Hung. P. C., 389; Germ. P. C., 263. So with criminal breach of trust.—Hung. P. C., 361. In Hungary it is cheating to obtain credit or to continue to obtain it, by putting or keeping a person in error by fraudulent means, although without intent to defraud, that is, without intent to appropriate the sum lent.—P. C., 384. There was a lively debate as to whether this act should be made penal.

It is essential in England in a case for obtaining goods by false pretences to prove that the goods were delivered on the faith of the false pretence charged.—*R.* v. *Jones*, 50 L. T., 726; *R.* v. *Hazzlewood*, 48 J. P., 151—C. C. R.

Section 425.

Mischief.

"Destruction of any property." It was recently held in England that the taking of mushrooms from a field was not an offence under the Malicious Injuries to Property Act, 1861, as there was damage neither to cultivated roots or plants, nor to the realty itself.—19 Q. B. D. 217.

During a game of football, the ball went over into an adjoining field. E trespassed by going to get the ball, and the justices convicted him of unlawfully and maliciously doing damage, with intent to destroy grass for the food of beasts. The conviction, which was under 24 and 25 Vict., c. 97, was, of course, upset.—*Eley* v. *Lytle*, 50 J. P., 308—D. No Magistrate in India would have convicted of mischief in such a case.

The offence of encroaching on another man's land, or on a public or private road, is generally dealt with as a contravention in Continental Codes. In Germany, it is punishable with imprisonment or a fine of 150 marks.—P. C., 370. The Dutch Code (427) punishes any "diminution of the facility of passage." The French Code speaks of "spoiling or deteriorating public roads in any way or diminishing their width."—479 (11). To make a cut to take water across a road is a contravention.—Cass., 10th August 1861. Any obstruction or encroachment constitutes an offence: for instance, the act of planting a hedge, so that the branches encroach on the road.—Cass., 7th February 1856.

Section 431.

Ulpianus says: "Publicum flumen esse Cassius definit, quod *perenne* sit." Article 538 of the Code Civile is as follows: "Les chemins, routes et rues à la charge de l'état, les fleuves et rivières *navigables ou flottables*, les rivages, lais et relais de la mer, les ports, les havres, les rades, et généralement toutes les portions du territoire français, qui ne sont pas susceptibles d'une proprieté privée, sont considérés comme des dépendances du domaine public." See also Prussian Law, ii., 15, ss. 38, 41; Austrian Code, 407.

Section 432.

In India it is necessary that the accused should intend to, or know that he is likely to, cause damage. In Holland it is sufficient if a fire, explosion, or inundation is caused by mere negligence. P. C., 158,163. So in the case of the sales, distribution, &c., of commodities dangerous to health or life, the punishment may be fine and detention for six months.—*Id.*, 175. But see ss. 272, 273, *supra*. Where there is knowledge or intention, the punishments are much heavier.

Section 435.

In Scotland some part of the subject must have been laid hold of by the fire to complete the offence. Hume i., 126; Alison i., 429. A person may be liable to punishment for setting fire to his own property, to the danger of his neighbour, although the fire was not intended to spread, and did not in fact spread to his neighbour's property.—Hume i., 134.

Section 436.

The Dutch law is very severe as regards fires, explosions, and inundations. Where they are due to negligence only, the punishment is three months' imprisonment, if danger to property has resulted, six months if danger to life, and a year if death has actually resulted.—P. C. 158. Where the fire has been intentional, the punishment is imprisonment for 12 years, 15 years, and 20 years or life, respectively.—*Ib.*, 157. Where there has been negligence only, six months is the maximum in India—S. 285, P. C. It is a year in Hungary.—P. C., 425. In Denmark a man who causes a fire by "forgetfulness of the ordinary rules of prudence" is punishable: but if he repairs the damage done, he will not be punished.—P. C., 284.

Section 441.

The act of a person in going into the house of another, with intent to have criminal intercourse with the latter's wife, although necessarily resulting in annoyance or insult to the latter, is not an offence under ss. 441 or 442—Kyshe, S. S. Rep., iii., 131. But adultery is not an offence in the Straits Settlements: the only criminal offence being enticing away. It seems that the act would be house-trespass in India.

Section 463.

It is enacted in the Penal Code of Denmark (274), that if the forgery is so clumsy that nobody with the slightest attention could be deceived by it, the punishment can be reduced by one-half.

Section 464.

A man may be convicted of forgery with intent to defraud, though there is no person in a situation to be defrauded by his act—*R.* v. *Nash*, 2 Den. C. C., 448. But see also *R.* v. *Hodgson*, 7 Cox, C. C., 122. A forgery must be of some document or writing ; therefore the painting an artist's name in the corner of a picture, in order to pass it off as an original picture by that artist, is not a forgery.—*R.* v. *Closs*, 7 Cox, C. C., 122.

Section 490.

Breach of Contract.

Where there is injury to the public or community at large or where it is impossible to obtain compensation for breaches of contract owing to the poverty of the promisor, there are reasons for adding a criminal to the civil sanction. The framers of the Penal Code remark : "But the mode of performing journeys and the state of society in this country are widely different. It is often necessary for travellers of the upper classes, even for English ladies, ignorant perhaps of the native languages, and with young children at their breasts, to perform journeys of many miles, over uninhabited wastes, and through jungles in which it is dangerous to linger for a moment, in palanquins borne by persons of the lowest class. If, as sometimes happens, those persons should, in a solitary place, set down the palanquin and run away, it is difficult to conceive a more distressing situation than that in which their employer would be left. None but very high damages would be any reparation for such a wrong. But the class of people, by whom alone such a wrong is at all likely to be committed, can pay no damages. The whole property of the delinquents would probably not cover the cost of prosecuting them civilly. It therefore appears to us that breaches of contract of this description may, with strict propriety, be treated as crimes." The necessity for protecting travellers has, as might have been expected, been experienced in a country like the Russian Empire, and the Penal Code of Russia prescribes rigorous penalties not only against professional guides who run away and leave travellers, but also against private persons who abandon their comrades under circumstances in which the abandonment may have fatal consequences for the latter.—Russ. P. C., 1517, *seq.*

As to injury to the public, the English law punishes *wilful and malicious* breaches of contract to supply gas or water, knowing, or having reasonable cause to believe, that the inhabitants may probably be deprived wholly or to a great extent of gas or water, or similar breaches of any contract of service, knowing or having reason to believe, that the probable consequence will be to endanger human life, or cause serious bodily injury, or expose valuable property to destruction or serious injury—38 and 39 Vict., c. 86, ss. 4, 5. Municipal Acts in India make it an offence punishable with a month's imprisonment or fine, for *conservancy* sweepers to resign their duties unless they have given one month's notice. The necessity for such a rule is palpable in a country, where scavenger's work is only performed by one caste, and municipalities have sometimes to import members of such castes at considerable expense from other districts. In this case both principles are applicable ; civil actions would be futile, and a strike would constitute a positive danger to the communi-

ty. Act V of 1861 (Police Act) renders a constable liable to three months' imprisonment, or to a penalty not exceeding three months' pay, if he resigns without the permission of his superior officer, or without giving two months' written notice of his intention to resign.—S. 29. This act, which is also punishable in England, partakes of the dual character of a breach of legal duty and a breach of contract of service. Act XIII of 1859 permits of the criminal punishment of artificers, workmen, or labourers, who having received money in advance on account of any work, *wilfully and without lawful or reasonable excuse*, neglect or refuse to perform such work. The Magistrate may, at the option of complainant, either order specific performance or repayment of the advance, and it is only on non-compliance with such order that the defaulter is liable to three months' imprisonment with hard labour. The words in italics impart a distinctly criminal element to the omission. In England, up to the year 1867, a workman was liable to be sent to prison for breaking his contract of service.

The Penal Code of Holland (332) punishes only acts of fraud in the delivery of articles necessary for the fleet or the army, by which the safety of the State may be endangered in time of war. It is sufficient, however, that the things are supplied during a time of peace, if the act is likely to compromise the safety of the State during a time of war ; so that this section, if any fraud could be proved, would cover the case of supplying worthless cutlasses and bayonets to the Admiralty and War Office. Again, as the safety of Holland depends on artificial dykes, we are not surprised to find that fraudulent breaches of contract by those who undertake the repair of the embankments, are punishable with as much as six years' imprisonment. To cause an inundation by the merest fault or negligence, is punishable with from three months' to a year's imprisonment, according to the results, while to cause one intentionally is punishable with imprisonment for 12 years, if there is common danger to property ; 15 years, if danger of death for any person ; 20 years, or for life, if the death of any person is actually caused—Dutch P. C., 157, 158. An action lay in England for enticing away a servant from his master's service and also for knowingly harbouring a servant during breach of service ; whether by the common law, or only after and by virtue of the statute of harbourers, is doubtful. This statute (23 Edw. 3) was passed in consequence of the Black Death, and marks a great crisis in the history of English agriculture and land tenure. Quite modern examples are not wanting.—*Hartley* v. *Cummings* (1847), 5 C. B., 247. Pollock, Torts, 197.

Section 494.

Bigamy.

It seems that a person need not be guilty of bigamy by marrying again within the statutory period of seven years, if he *bonâ fide* believes his wife to be dead.—*R.* v. *Moore*, 13 Cox, C. C., 544 ; *R.* v. *Horton*, 11 Cox, C. C., 670. But *contra*—*R.* v. *Gibbons*, 12 Cox, C. C., 237, and *R.* v. *Bennett*, 14 Cox, C. C., 45. The following suggestions are worthy of the consideration of the English and Indian Legislatures: (1) The period of absence should be reduced from seven to five years : (2) a *bonâ fide* belief of the death of first husband or wife should be a sufficient defence to a prosecution for bigamy : (3) the

permanent insanity of husband or wife or a sentence of five years' imprisonment should be a ground for divorce, and a complete defence to a prosecution for bigamy. As to the second suggestion, perhaps *some* lapse of time should be insisted on. As regards the Enoch Arden case, it is the law in some American states, that one party to a marriage, who marries again on the false rumour of the other's death, when such other has been absent *two* years, is not liable to the penalties of adultery or bigamy, but the one not twice married may, on return, elect to have the former wife or husband restored, or the first marriage dissolved.—Stimson Stat. Law, p. 670. As to a sentence of imprisonment for crime, this is a ground for divorce in nearly all the states of America. In some states the sentence must be for life: in Massachusetts it need only be for five years: in Vermont, Michigan, Wisconsin, Nebraska, and Arizona for three years: in Pennsylvania, Idaho, and Georgia for two years: and in Minnesota for any term. In some states the marriage is at once dissolved by the fact of conviction, without any judgment of divorce or other legal process; in others on the application of the other party.—*Ib.*, 687, 688. It is a good defence to an indictment for bigamy that the prisoner at the time of the second marriage honestly and *bonâ fide* believed that his first wife was dead, and had reasonable grounds for so believing. —*R.* v. *Horton*, 11 Cox, C. C., 670; even though seven years may not have elapsed since the person supposed to be dead was last heard of. —*R.* v. *Moore*, 13 Cox, C. C., 544.

Section 497.

Adultery.

The husband used to have an action at common law against an adulterer, commonly known as an action of criminal conversation, In form it was generally trespass *vi et armis*, on the theory that "a wife is not, as regards her husband, a free agent or separate person."—Coleridge, J., in *Lumley* v. *Gye*, 22 L. J. Q. B., 478. Such actions were abolished in England on the establishment of the Divorce Court in 1857, but damages can be claimed on the same principles in proceedings for a dissolution of marriage or judicial separation.—20 and 21 Vict., c. 85, ss. 33, 59. Pollock, Torts, 196.

In Russia, Germany, Denmark, Holland, and Hungary, the husband and wife are equally punishable for adultery. In Russia the imprisonment is from four to eight months, or (in the case of a woman) relegation to a convent.—Russ. P. C., Tit. XI. In Germany, the imprisonment extends to six months, but there can only be a prosecution after a decree for divorce has been pronounced in consequence of the adultery.—P. C., 172. A similar restruction exists in Hungary, except that a decree for separation is sufficient; the maximum imprisonment is three months.—P. C., 246. Both in Germany and Hungary, the paramour as well as the husband or wife are punishable. Art. 241 of the Dutch Penal Code punishes with six months' imprisonment: (1) the married person who commits adultery: (2) the unmarried person who does so, knowing that his or her paramour is married. In Denmark the law appears to be the same, but the punishment is fine only, if the husband and wife had ceased to live together, and there are other extenuating circumstances.—Den. P. C., 159. In France and Belgium, both wife and accomplice are punishable, but the husband can only be prosecuted for keeping a

concubine in the conjugal house.—Fr. P. C., 336, 339 ; Belg. P. C., 389. In America adultery and even fornication is punished as a common-law offence, if so open and notorious as to amount to a public nuisance, while in many of the States these acts have been made statutory offences.—Bishop, Stat. Crimes, 625, 654, 655. The law goes dangerously far in some States. In Connecticut, where adultery is felony, an unsuccessful enticement to it has been adjudged to be an indictable attempt! Otherwise in Pennsylvania, where the act is only a misdemeanour.—*The State* v. *Avery*, 7 Coun., 266 ; *Smith* v. *Commonwealth*, 4 Smith, Pa., 209. The reasons given by the framers of the Indian Penal Code for not punishing the inconstancy of the woman are far less applicable now than when they were written. "To make laws for punishing the inconstancy of the wife while the law admits the privilege of the husband to fill his zenana with women, is a course which we are most reluctant to adopt. We are not so visionary as to think of attacking by law an evil so deeply rooted in the manners of the people of this country as polygamy. We leave it to the slow, but we trust, the certain operation of education and of time." These two potent factors have done their work, and Hindus, generally speaking, are now monogamists. Along the frontiers of the Punjab, inhabited by fierce and warlike races, the Legislature have had to penalise the adultery of married women. —Reg. I of 1872, s. 8, repealed and re-enacted in the Punjab Frontier Crimes Regulations, IV of 1887, s. 32. See also s. 7 of the Sindh Frontier Regulation of 1872. According to the laws of Manu, the adulterous wife was to be devoured by dogs in a public place, and the adulterer burned slowly to death on a red hot iron bed. The present exemption of women increases immorality. There is no reason now why they should not be liable to prosecution and punishment, on the complaint of the husband.

In Denmark, the husband who forces his wife to have carnal intercourse with another person, or who, without her knowledge and consent, gives others opportunities for having such intercourse with her, is punishable with imprisonment: if his object be gain, the punishment is bread and water diet.—P. C., 183.

Section 498.

In Penang enticing is an offence, but not adultery. It has therefore been held that the words "have illicit intercourse with any person" must be read as any person other than the person so enticing. —Kyshe, S. S. Rep., iii., 105.

Section 499.

Defamation.

It has been held in England that no action will lie against an advocate for defamatory words spoken in the course of an inquiry before a judicial tribunal, though they are uttered maliciously, and even from ill-will, and are irrelevant to the issues.—*Munster* v. *Lamb*, 11 Q. B. D., 588. This would be defamation in India, as it falls within the definition in 499, and does not come within any of the exceptions.

The mere denial of the truth of the Christian religion, or of the Scriptures, is not enough, *per se*, to constitute a writing a blasphemous libel, so as to render the writer or publisher indictable. But

indecent and offensive attacks on Christianity or the Scriptures, or sacred persons or objects, calculated to outrage the feelings of the general body of the community, do constitute the offence of blasphemy, and render writers or publishers liable at common law to criminal prosecution.—*R.* v. *Ramsay*, 15 Cox, C. C., 231.

An imputation, say, on Mahomet would not fall under Expln. 1st. It would fall under s. 298, if there were a deliberate intention of wounding the religious feelings of any person.

The sending of a newspaper containing defamatory matter by post from Calcutta, where it is published, to a subscriber at Allahabad, is a publication at Allahabad.—I. L. R., 3 All., 342, 345.

By Art. 258 of the Hungarian Penal Code, it is defamation to impute to another before two or more persons an act which, if true, would furnish ground for a criminal prosecution or expose such person to public contempt. In defence, the truth may be proved in many cases, but the defence of good faith is never admitted. By Art. 260, it is defamation to accuse another before some authority of some punishable act, when the accusation has been found to be false, and does not amount to the crime of false accusation under Art. 227 of the Code. This is to meet cases in which charges are hastily made and without sufficient proof, and in which it is impossible to prove that the accuser knew his accusation to be false. Some such provision is required in India. In England, the action for damages appears to be sufficient. There can be no prosecution for defamatory expressions used in Court during the trial of a case : but this does not prevent such matters being departmentally taken up against advocates and public notaries, nor does it prevent the application of other provisions of the law tending to the repression of defamatory or injurious expressions—*Id.*, 266. If there is a case or proceeding pending in respect of the fact alleged, the prosecution for defamation must be suspended until the former has been completed. By Art. 277, in the case of a conviction, the injured party can demand that the judgment in full be published in the journal of the district or any journal named by the injured party. If the defamation has been committed in any periodical newspaper, the judgment must be published at the head of the very first number published after the decision.

Expln. 1.

Lord Kenyon, C. J., remarked :—"Now to say, in general, that the conduct of a dead person can at no time be canvassed ; to hold that, even after ages are passed, the conduct of bad men cannot be contrasted with the good, would be to exclude the most useful part of history, and, therefore, it must be allowed that such publications may be made fairly and honestly. But, let this be done whenever it may, whether soon or late after the death of the party, if it be done with a malevolent purpose, to vilify the memory of the deceased, and with a view to injure his posterity, then it is done with a design to break the peace, and then it is illegal." *R.* v. *Topham*, 4 T. R., 126, 129. *R.* v. *Critchley*, *ib.* A more recent case, tried before Mr. Justice Stephen, shows that the Legislature should more precisely define the limit to which prosecutions may be instituted by the relatives of deceased persons. The Indian Penal Code says "near relatives," but that is not sufficiently precise. The Hungarian Code gives the right of prosecution only to the children, father, mother, brother, sister

husband, or wife of the deceased person; and this rule applies even where the defamation was committed during the life-time of a person since deceased.—Hung. P. C., 273. The law is exactly the same in Denmark, P. C., 223. The German law also is the same, except that brothers and sisters are excluded.—P. C., 189. In Holland the right of prosecution is extended to relatives, whether in a direct or collateral line, up to the tenth degree.—P. C., 270.

The Legislature cannot rigidly define what is for the public good, and what is not. But it might with advantage declare in what classes of cases this defence may, and in what classes it may not be permitted. The framers of the Penal Code remarks: "The proclaiming to the world that a man keeps a mistress; that he is too much addicted to wine; that he is penurious in his house-keeping; that he is slovenly in his person; the raking up of ridiculous and degrading stories about the youthful indiscretions of a man who has long lived irreproachably as a husband and a father, and who has attained some post which requires gravity, and even sanctity of character, can seldom or never produce any good to the public sufficient to compensate for the pain given to the person attacked, and to those who are connected with him." The Dutch Penal Code lays down rules for the guidance of the judge as to whether proof of the truth is to be admitted or not. Art. 263 of that Code enacts that evidence of the fact imputed can only be admitted in the following cases: (1) if the judge thinks that an inquiry as to the truth is necessary in order to test the assertion of the accused, who claims to have acted in the public interests or for his own defence; (2) when the imputation is made against a public functionary for some act committed in the exercise of his functions, and even in these cases such evidence is not admitted, if the fact imputed can only be prosecuted on the complaint of some person who has not complained. In Hungary proof of the fact imputed or of the expression used is permitted: (1) If the aggrieved person is a public officer, and the imputation or expression refers to the exercise of his duties; (2) if, at the time of the imputation, criminal proceedings had already been instituted in respect of the fact imputed; (3) if a final judgment has declared the truth of the fact imputed; (4) if the aggrieved party himself demands, in justice, the admission of proof; (5) if the defendant proves that the object of his imputation was to protect some public or private legitimate interest. Proof of the truth of the imputation or the expression results in the acquittal of the defendant. On the other hand, this proof is not allowed, even on the demand of the aggrieved party: (1) if the defamation or insult has been committed against the Sovereign or the Head of a Foreign State, or against the Ambassador with the King, or the Chargé d' Affaires of a Foreign State; (2) if the imputation or expression has reference to an act, which can only be prosecuted on the complaint of the party aggrieved, and the latter has not made such complaint or has withdrawn it; (3) if there has been a final judgment of acquittal or a withdrawal of prosecution regarding the act imputed; (4) if the imputation or the expression *concerns acts of family life, or affects the honour of a woman.* Hung. P.C., 263, 264. It can seldom be for the public good that the acts of domestic life should be dragged before the public. In Denmark, the defence of justification is not permitted in the case of public revelations regarding personal or domestic matters, which disturb the peace of public life.—Den. P. C., 220. In England the truth

of the imputation was first admitted as a defence by 6 and 7 Vict., c. 96, s. 6, and this defence can now be given before the Magistrate by 44 and 45 Vict., c. 60, s. 4. But it must be shown that the imputation was made with good motives and for justifiable ends, and the Court in pronouncing sentence may consider whether the guilt of the defendant is aggravated or mitigated by the plea and evidence of the truth.

In Austria the publication of shameful accounts of private or family life, *even when true*, is always a punishable offence. So is the act of reproaching another on account of his having been convicted of an offence. Under the Bavarian Penal Code whoever causes the condemnation of a criminal to be made a reproach to his relatives is liable to a penalty of from eight to fourteen days' imprisonment.

Excep. 2.

In an action to recover damages for libel, it appeared that the appellants had in their newspaper falsely charged the respondent, a public officer, with specific acts of misconduct in the execution of the duties of his office, had vouched for the truth of those charges, and on the assumption of their truth, commented on his proceedings in highly offensive and injurious language: *Held*, that they were liable. The privilege which covers fair and accurate reports of proceedings in parliament and in Courts of Justice does not extend to fair and accurate reports of statements made to the editors of newspapers.—*Davis* v. *Shepstone*, 34 W. R., 722.

As regards judicial proceedings it is immaterial whether they are preliminary or final, and, according to the prevailing modern opinion, whether contested or *ex-parte*, and also whether the Court actually has jurisdiction or not, provided that it is acting, in an apparently regular manner.—*Usill* v. *Hales*, 3 C. P. D., 319; *Lewis* v. *Levy*, 27 L. J. Q. B., 282. The rule does not extend to justify the reproduction of matter in itself obscene, or otherwise unfit for general publication, or of proceedings of which the publication is forbidden by the Court in which they took place.—*Steele* v. *Brannan*, L. R., 7 C. P., 261. Pollock, Torts, 232.

Excep 4.

A specially qualified protection is given to newspaper reports of public meetings by a curiously framed statute of 1881, the Newspaper Libel and Registration Act, 1881, 44 and 45 Vict., c. 60, s. 2. The meeting must be lawfully convened for a lawful purpose and open to the public; the report must not only be "fair and accurate, and published without malice," but the publication of the matter complained of must have been for the public benefit; and the defendant must not have refused on request to insert in the same newspaper a reasonable explanation or contradiction of the injurious matter.—Pollock, Torts, 233. A Newspaper Libel Law Amendment Act has been passed this year (1888.)

Excep. 7.

The publication of censure must not be needlessly public.—I. L. R., 6 Mad., 381. In this case a man was excommunicated for marrying a Hindu widow, and the sentence of excommunication was communicated to him by the head priest of the caste *on a*

post-card. There is a similar case in England where the publication was by a telegram.—*Williamson* v. *Freere*, L. R., 9 C. P., 33.

Mayne refers to the case of *Dawkins* v. *Lord Paulet* (5 Q. B., 94), in which it was held by three Judges, in opposition to the opinion of Cockburn, C. J., that no action would lie by an inferior officer against his superior for reports upon his conduct written by such superior in the ordinary course of his military duty, even though they were written maliciously and without reasonable and probable cause. The words "in good faith," in this exception show that the view taken by the Chief Justice is the one which is to be applied to its construction.

Excep. 8.

The 8th exception is a considerable extension of the rule laid down by Lord Campbell in *Harrison* v. *Bush*, 25 L. J., Q. B., 25. "A communication made *bonâ fide* upon any matter, in which the party communicating has an interest, or in reference to which he has a duty, is privileged, if made to a person having a corresponding interest on duty, although it contains criminatory matter, which, without the privilege, would be slanderous and actionable." In India it is not necessary that the informant should have any interest, or be under any duty to make the communication.

Excep. 9.

Revelation of Professional or other secrets.

Of course extortion may be committed in England and India by threats to divulge secrets. It is a misdemeanour in England to publish, or threaten to publish, or propose to abstain or prevent from publishing, any libel with a view to extortion—6 & 7 Vict., c. 96, s. 3. But apart from extortion, and apart from any exceptional circumstances which might bring the act within the category of slander or defamation, the revelation of secrets *per se* does not appear to be punishable either in England or India. Continental Penal Codes contain special provisions on this subject. The French Penal Code imposes a penalty of from one month to six month's imprisonment and fine on doctors, surgeons, midwives, and all other persons who, by reason of their knowledge or profession are the possessors of secrets, if they reveal such secrets, except in those cases in which the law may compel them to inform. The law is the same in Belgium.—Fr. P. C., 378; Belg. P. C., 458. See Pruss. P. C., Pt. II., ch. 13. The German Code (300) adds also the assistants of the above classes of persons, and specially names the defenders of accused persons and apothecaries. The Hungarian Penal Code (328) confines the obligation to six classes of persons, namely, public functionaries, advocates, doctors, surgeons, and midwives. The punishment is three months' inprisonment, and a fine of 1,000 florins. The Dutch Penal Code (272) is more general, and punishes with six months' imprisonment or a fine of 600 florins any person who intentionally reveals a secret which he was bound to keep, by reason of the duties or the profession which he actually exercises or has exercised. This Code also imposes the same penalty on any person who intentionally reveals the particulars of any commercial or industrial enterprise in which, he is or has been, employed, and which he ought to have kept secret.—*Ib.*, 273. The Danish Penal Code (220) contains

a very salutary provision of a somewhat comprehensive nature. "Whoever, by public revelations of personal or domestic matters disturbs the peace of private life, is punishable with a fine of 200 rix dollars, or simple imprisonment for three months." The same punishment is incurred by any person who reveals secrets contained in letters.

The revelation of State secrets also is a matter which is adequately dealt with in Continental Codes, but we look in vain through English law and the Indian Penal Code for any provisions on the subject. The fellow Marvin, who divulged an important State document, had to be put on his trial for *larceny of the paper* on which the document was written. A constitutional lawyer alludes to the inadequacy of the English law on this subject.- Dicey, Const. L., 2nd Ed., p. 203. The penalties in Continental Codes differ according to the nature of what is revealed, and according as such revelation may harm the internal or external safety of the State. In the latter case the punishment in Denmark is three years' imprisonment in a State prison; in Hungary the punishment is five years, and ten years, if the communications are made to the enemy.—Den. P. C., 80; Hung. P. C., 146. In France the punishment is death.—Fr. P. C., 80. In Belgium the punishment is perpetual detention if an official betrays secrets of negotiations or expeditions to a hostile power or its agents; if to any other power, the punishment is from ten to fifteen years' detention. Belg. P. C., 118. The same punishments are imposed for the disclosure of plans of arsenals, fortifications, &c.—Belg. P. C., 119. Fr. P. C., 81. In Germany the minimum punishment is two years' reclusion. —Germ. P. C., 92. Officers in the diplomatic service, who reveal confidential communications, are liable to a fine of 5,000 marks.

Section 501.

In Holland there is a special provision regarding the respective liabilities of editor, printer, and author. The editor, as such, is not punishable, if the document contains his name and address, and the author is either known or has been named by the editor at the first hearing after the commencement of the prosecution. But this exemption does not apply if, at the time of publication, the author could not be criminally prosecuted or was not in Holland. So the printer is not punishable, if the document contains his name and address, and if the person by whose order the libel was printed is known or has been named by the printer.—P. C., 53, 54.

Section 503.

To intimidate is to use language which causes another man to fear. It is not merely to use violence or to threaten to use violence. It is not brought about by actual threats of violence to a person or his property, but by attempting by any means to make that person afraid.—36 W. R., 103, *per Smith* and *Stephen, JJ.*

Section 510.

See under 159 P. C. A place to which the public have no right of access, but where they are in the habit of trespassing without interference, is a public place.—*R.* v. *Wellard*, 51 L. T., 604.

A railway carriage is a public place.—*Langrish* v *Archer*, 10 Q. B. D., 44. See notes under s. 159.

In Holland to be found in a state of evident drunkenness on a public road is punishable with a fine of fifteen florins; if six months have not elapsed since the last conviction, punishment may be detention for three days; if a third conviction within a year, two weeks; for fourth or subsequent convictions, within six months of the last conviction, three weeks, and the offender may also be condemned to work in some State work for a year.—P. C., 453 The Hungarian Code uses the words "scandalous drunkenness."—P. C., 84. In Germany a man may be sentenced to imprisonment if he is given to gambling, idleness, or drunkenness, so that he or those dependent on him have to be supported from the public funds.—Germ. P. C., 361 (5).

Section 511.

Attempts.

Beccaria (Chapter XIV) remarks that "the importance of preventing an attempt at a crime justifies a punishment; but *as there may be an interval between the attempt and the execution*, the reservation of a greater punishment for a consummated crime may present a motive for its non-completion." An exact determination and appreciation of the offence accomplished, the attempt accomplished, the impossible offence, the act which has failed in its object, the absolutely insufficient means, the relatively insufficient means—these must be left to the province of theoretical jurisprudence. The following broad principles might perhaps be embodied in a model Penal Code:—

(1). An attempt must be punished less severely than the offence itself.

This is not necessary in England, 14 & 15 Vict., c. 100, ss. 9 & 12. In Holland (P. C., 45) the punishment is two-thirds of that provided for the consummated offence; in Denmark (P. C., 46) three-quarters; in Germany (P. C., 44) one-quarter of the minimum provided; in Hungary (P. C., 65) it may be less than the minimum, or some less severe kind of punishment. In Belgium an attempt is punished in the same way as if the offence were proved with extenuating circumstances.—Belgium P. C., 52,80,81. In Russia the punishment is from one to four degrees less, according to circumstances. Under the Penal Code of Sardinia it is from two to three degrees less according as the execution was more or less distant.

(2). Attempts to commit certain minor offences should not be punished at all.

In Continental Codes offences are generally classed as crimes, delicts, and contraventions; the general rule being that attempts are punishable in the first case, not in the third, and only in the case of delicts when so specified.—Germ. P. C., 43; Hung. P. C., 65; Dutch P. C., 45, 46. In France attempts to commit delicts are punishable in nine cases only.—Fr. P. C., 179, 241, 245, 388, 400, 401, 405, 414, 415. These offences are bribery of officials, escape, theft of certain animals, crops, &c., extortion, cheating, and intimidation to lower or increase salaries. In India there can be no attempt to commit an offence under any local or special Act, nor any offence under the Penal Code, which is punishable with fine only. In England, it seems that there can be an attempt to commit any felony or misdemeanour, but the law is not very clear on the point.

(3). The culpability of an attempt should be greater in proportion to its proximity to consummation. To use the words of the Danish Penal Code (46), the court, in determining the punishment, should consider the greater or lesser distance which separates the attempt from the consummated offence. This is obvious, but some of the English and Indian cases are not in harmony with the rule.

(4). Simple preparatory acts should not be punishable; but conspiracies of two or more persons to commit an offence are punishable, independently of any commencement of execution.

(5). An attempt is not punishable, if the author of it (*a*) has of his own accord abandoned the execution of the intended offence, without being prevented by circumstances independent of his will; or (*b*) if, before the act has been discovered, he averts the effect, which constitutes the completion of the offence. Germ. P. C., 46; Hung. P. C., 67.

(6). When the intention of the doer has manifested itself by a commencement of execution, and the attempt has remained unachieved or has failed in its effect solely owing to circumstances independent of the will of the doer, it should (may) be regarded as the crime itself. This is actually the French law, P. C., 2. The German law looks at the *result produced*, and enhances or diminishes the criminality according to the varying degrees of harm caused. The French legislator says: "Never mind the result: if a certain result would have taken place but for circumstances beyond the control of the author, the latter is punishable as if the result had taken place." Owing to the difficulty of ascertaining criminal will and intention, the German doctrine is more practical and therefore preferable. In his preface to the translation of the Bavarian Code, Vatel remarks that "What pre-eminently distinguishes German from French legislation is the *objectivity* of the former." An attempt to pick a pocket, which fails owing to there being nothing in the pocket, ought obviously to be punishable: in France it would be punished in the same way as the consummated offence, seeing that the intention has completely manifested itself, and has only failed in its execution owing to the absence of anything in the pocket, a fact independent of the actor's will. This appears to be sound sense and sound law; but the illustration in the Penal Code is nothing more nor less than the English case of *R.* v. *Collins*, in which it was ruled that, the pocket being empty, there could be no conviction of an attempt to steal. L. & C., 471; 9 Cox P. C., 497. This shows that the framers of the Penal Code intended the Indian law of attempt to be wider than the English law, and yet some of the reported rulings have actually made it narrower. For instance, there are one or two rulings that an attempt must be the *last* act, which, if not prevented by exterior circumstances, would result in the commission of the offence See 8 C. & R. 572, in which Garth, C. J., quotes the remarks of Lord Blackburn in *R.* v. *Cheeseman* and of Cockburn, C. J., in *R.* v. *McPherson*, Dearsley and Bell's Crown Cases, 202. "An attempt must be to do that which, if successful, would amount to the felony charged." This ruling was followed in an Allahabad case. The accused was convicted of having made false statements at a central octroi office as to the contents of certain skin vessels, the object of which was to get a certificate entitling him to a refund of octroi duty; but, his deception being discovered, the certificate was not given to him. Now, this false statement was absolutely the *last* act which it was in the power

of the accused to commit towards the offence of cheating: there was absolutely no *locus pœnitentiæ* but to withdraw the false statement. The learned judge appears to have overlooked the fact that, had the certificate been given, the offence of cheating would have been complete under either of the alternative definitions in sec. 415 of the Penal Code. Bishop has laid it down in unequivocal terms that an attempt need not be the act next preceding the one which would complete the substantive crime intended, or, in the words of an American case, it need not be the last proximate act prior to the consummation of the felony attempted to be perpetrated. "An attempt," says Bishop, "is an intent to do a particular thing which the law, either common or statutory, has declared to be a crime, coupled with an act *toward the doing*, sufficient, both in magnitude and proximity to the act intended, to be taken cognizance of by the law, which *de minimis non curat*." Bishop discusses at length the English cases of attempted pocket-picking and attempted abortion, and observes that they are not reconcilable with any uniform principle. In 1846, it having been made punishable by 7 Will. iv. and 1 Vict., c. 85, s. 6, unlawfully to "use any instrument with intent to procure the miscarriage of any woman," a man was held to be guilty, though the evidence showed affirmatively that the woman, supposed to be pregnant, was not so in fact. *R.* v. *Goodall*, 1 Den., C. C., 187. The acutest understanding, says Bishop, could not reconcile this with the pocket-picking case. "It being an accepted truth that the defendant deserves punishment by reason of his criminal intent, no one can seriously doubt that the protection of the public requires the punishment to be administered equally, whether in the unseen depths of the pocket or the womb, what was supposed to exist, was really present or not." The pocket-picking case has been decided to be an attempt in the courts of Pennsylvania, Massachusetts, Indiana, and Connecticut. Fletcher, J., remarks: "A man may make an attempt, an effort, a trial, to steal, by breaking open a trunk, and be disappointed in not finding the object of pursuit." *Commonwealth* v. *MacDonald*. 5 Cush., 365. "It would be a startling proposition," said Butler, J., "that a known pick-pocket might pass around in a crowd, in full view of a policeman, and thrust his hands into the pockets of those present with intent to steal, and yet not be liable to arrest or punishment, until the policeman had first ascertained that there was in fact money or valuables in some one of the pockets on which the thief had experimented." "If a man," says Bishop, "undertakes to rob one who, contrary to appearances, has no money, by reason of which the undertaking miscarries, shall he, after having throttled, stripped, and searched his victim, be permitted to deny his intent to commit robbery?" As regards the difference between preparation and attempt, Denman, C. J., once stated the doctrine in very strong terms: "Any step taken with a view to the commission of a misdemeanour is a misdemeanour." This proposition obviously goes too far, and was apparently based on the common-law doctrine that certain sorts of distant preparations are indictable. *R.* v. *Chapman*, 1 Den., C. C., 432,439. This proposition obviously goes too far, and was apparently based on the common-law doctrine that certain sorts of distant preparations are indictable. The dictum of Parke, B., is more reasonable: "Some act is required . . . . . Acts remotely leading towards the commission of the offence are not to be considered as attempts to commit it, but acts immediately connected with it

are." The comprehensive nature of the Indian law of abetment (ss. 107, 108, P. C.) renders it unnecessary to consider many cases, which, as attempts, might be considered to lie near the border or partition line. In Georgia it was held to be an attempt to take an impression of the key of a warehouse, and have a key made from it for use in committing a larceny therein. *Griffin* v. *The State*, 26 Ga., 493. So it is not necessary to consider whether solicitations amount to attempts in India, as they constitute abetment. In a case decided by Patteson, J., it was held that soliciting an engraver to engrave a plate for forgery is indictable as an attempt. This would be punishable as abetment in India. The Indian statute-law is defective in one particular, in that the draftsman is guilty of a *petitio principii* by using the words "in such attempt," which, in truth, is the very phrase that requires definition.

INDEX.

Abduction, 167—170, 286.
Abetment, 40—49, 266.
of counterfeiting coin, 104.
of mutiny, 55.
of waging of war, 49
of suicide, 145.
Abandonment of child, 149, 284.
Abortion: See *Miscarriage.*
Absconding, 71.
Abuse, criminal, 241.
Accident, 25, 261.
Act, includes illegal omission, 11.
Actus non-facit reum, 112.
Admiralty jurisdiction, 255.
Adulteration, 116, 117, 118, 276.
Adultery, 229—232, 297.
Affidavit, false, 83.
Affray, definition of, 65.
Age, as excuse for crime, 27, 28, 262.
Air, vitiation of, 119.
Alteration of coin, 107.
Ambassadors, exemption from criminal law, 3, 251, 254.
Animals, mischief by killing, &c., 201.
negligence with respect to, 124.
theft of, 288.
Annoyance, criminal, 206, 241, 245.
Anonymous communication,
intimidation by, 243.
Arm: See *Weapon.*
Arms, collecting of, for war, 50.
practising use of, 58.
Army and navy, offences relating to, 55—57.
Arson, 204, 294.
Articles of war, persons subject to, 56.
Assault, 161, 285.
against Governor, 51.
of public servant, 101, 163.
of public servent suppressing riot, 62.
on women, 164.
Assembly: See *Unlawful Assembly.*
for purpose of dacoity, 186.
Assistance, omission to give, 77.
obligation to give, 271.
Associations, assemblies of, 58.
secret, 53.
Attempt, to commit offence, 248, 304—307.
to commit suicide, 146.
to murder, 145.

Battery: See *Criminal Force.*
BELGIUM,
Penal Code, 14, 16, 41, 50, 53, 67, 71, 95, 101, 117, 136, 139, 149, 171, 177, 185, 187, 195, 196, 197, 224, 230, 249, 259, 263, 298, 302, 303.
Benamee transactions, 86, 198.
Bestiality, 174.
Bigamy, 225—228, 296.
Birth, concealment of, 150.
Bracton, references to, 82, 91, 273.
Breach of contract, 223—225, 295.
Breach of the peace, insult to provoke, 241.
in public place, 65, 245.
Breach of trust, criminal, 189.
in respect of letter, 291.
Bribery: See *Illegal Gratification.*
British India, 1, 6.
kidnapping from, 165.
offence committed without, 2, 3.
Burglary, 208.
Burial-places, trespass on, 129.

Carrier, breach of trust by, 190.
Certificates, false, 83, 272.
Charge, false, 87.
Cheating, 192—198, 293.
Child, definition of, 27.
concealment of birth, 150.
exposure of, 149, 284.
kidnapping of, 170.
offence by, 27, 262.
CHINA,
Penal Code, 26, 28, 95, 111, 112, 123, 125, 131, 133, 134, 137, 188, 194, 195, 204, 206, 227, 229, 232, 243, 244.
Civic degradation, a punishment, 16.
Clerk, breach of trust by, 190.
theft by, 180.
Coercion: See *Threats, Married Woman.*
Coin, offences relating to, 102—108.
Colonial Courts Act, 255.
Common nuisance: See *Nuisances.*
Compounding felony, 91—93, 273.
Compulsory labour, 171, 287.
Concealment of offender, 90.
of birth, 150.
of design to commit offence, 48, 50.
of property, 86, 199.
Confession, hurt to extort, 154.
Confinement, solitary, 23.
Consent, as affecting offences, 30—32, 162, 265.
Conspiracy: See *Abetment.*
to wage war, 50.
Consuls, jurisdiction over, 254.
Contempts of authority, 71—78.
Contempt of Court, 101.
Contract, criminal breach of, 223—225, 295.
fraud in State, 296.
Contravention, 113, 262.
criminal intention not necessary in, 14.

Corporation, criminal prosecution of, 280.
Corpus delicti, in case of murder, 140.
Correction, power of, 163.
Corrupt order, by public servant, 96, 97.
Corruption, official, 66—69, 269.
Counterfeit, coin, 102, 274.
definition of, 10.
seal for forging, 218.
stamp, 108.
trade-mark, 221.
COURT OF CASSATION, rulings of, 14, 67, 88, 94, 96, 98, 101, 113, 121, 125, 151, 164, 171, 177, 187, 196, 201, 213, 216, 222, 234, 290, 293.
Court of Justice, act done by order of, 25.
definition of, 7.
false evidence in, 81.
publication of proceedings of, 234.
Criminal breach of contract, 223—225, 295.
Criminal breach of trust, 189.
in respect of letter, 291.
Criminal force, 160, 285.
to public servant, 163.
to a woman, 164.
Criminal intention, 12.
not necessary ingradient of offence, 14.
Criminal intimidation, 242, 303.
Criminal Law Amendment Act, 171, 172, 286 (48 and 49 Vic., c. 69.)
Criminal liability, 24—34, 259—265.
of abettor, 42—46.
of master for servant, 41.
Criminal misappropriation, 186—189, 288, 290.
Criminal trespass, 206, 294.
Cumulative offence, punishment for, 22.

Dacoity, 184.
Deadly weapon, hurt with, 153.
rioting with, 62.
Death, sentence of, 18.
causing, 131—141.
Deceased, defamation of, 299.
Deception, in case of rape, 172, 287.
Declaration, false, 83.
Defamation, 293—242, 298—302.
Definitions, 4—15.
De minimis non curat lex, 34, 306.
DENMARK,
Penal Code, 251, 258, 259, 262, 266, 267, 272, 276, 281, 282, 284, 286, 290, 292, 293, 294, 297, 300, 302, 303, 304, 305.
Depredation, offence of, 54.
Deserter, harbouring, 56.
Destruction of document, 85.
of property, 199—206, 293.
Disaffection, exciting, 51, 268.
Dhurna, sitting, 246.
Disease, spreading of, 115, 116, 276.
Dishonest misappropriation, 186, 288, 290.
'Dishonestly,' 9.
Disobedience, to order, 77.

Document, definition, 10.
destruction of, 85.
framing incorrect, 70.
omission to produce, 73.
Documents, offences relating to, 212—219.
Driving, rash, 119, 277.
Drugs, adulteration of, 117, 118.
Drunkenness, as excuse for crime, 29, 264.
in public place, 245.
Duelling, culpable homicide, 138, 282.

East, references to, 34, 243.
Embezzlement: See *Criminal Breach of Trust, Criminal Misappropriation.*
Encroachment on road, 112, 121, 202.
Enticing away married woman, 232, 286.
Escape, permitting, 97.
Escaped prisoner, harbouring of, 54, 93.
Evidence, causing disappearance of, 84.
false, 78—83.
Explosives, mischief by, 204.
negligence with respect to, 123, 277.
Exposure of child, 148, 284.
Ex-territoriality, 254.
Extortion, 181.
when amounts to robbery, 183.
Extra-territorial jurisdiction, 3, 274.

Fabrication of false evidence, 80.
False, certificates, 83, 272.
charge, 87, 273.
coin: See *Counterfeit.*
evidence, 78—83, 271.
document, 213.
information, 74, 75, 85
personation, 71, 85, 197.
pretences: See *Cheating.*
rumours, 242.
statement, 75, 83.
trade-mark, 220.
weights and measures, 111.
Falsification of accounts, 216.
of record, 70, 81.
of Accounts Act, 1875, 291.
Felony, killing in act of, 139.
compounding of, 91—93, 273.
Finder of property, 186, 188, 291.
Fine, amount of, 258.
sentence of, 20.
when leviable, 22.
Fire, mischief by, 204, 294.
negligence with respect to, 122, 277.
Fireworks, discharge of, on road, 121.
Fish, theft of, 288—290.
Food, adulteration of, 116, 276.
sale of noxious, 117, 276.
Force, 160.
used by unlawful assembly, 60.
Foreign Enlistment Act, 3.

Forfeiture, sentence of, 19.
Forgery, 212—219.
clumsiness in. 294.
Foster, references to, 26, 37, 82, 139.
FRANCE, Code of Criminal Procedure, 23.
Penal Code, 13, 16, 28, 41, 50, 53, 58, 67, 71, 83. 94, 96, 98, 101, 113, 125, 136, 140, 149, 151, 163, 171, 177, 185, 197, 201, 202, 205, 224, 230, 234, 235, 257, 259, 261, 263, 290, 292, 293, 298, 302, 303, 304, 305.
Fraud: See *Cheating*.
against Court of Justice, 86, 87.
as regards coin, 104—108.
as regards stamps, 110.
as regards weights and measures, 111.
in State contracts, 296.
Fraudulent transfer of property, 86, 198.
Funeral rites, disturbance of, 129.

Gambling, 128.
General Clauses Act, 21.
General exceptions, 24—34.
General explanations, 4—15.
GERMANY, Code of judicial organisation, 254.
Penal Code, 15, 28, 36, 53, 88, 90, 121, 134, 149, 153, 157, 171, 187, 200, 203, 205, 224, 229, 231, 249, 257, 258, 259, 261, 264, 265, 267, 268, 270, 271, 272, 273, 281, 282, 284, 290, 292, 293, 297, 300, 303, 304, 305.
Gift: See *Illegal Gratification*.
offer of, for restoration of property, 92.
Gleaning, 178.
Governor, liability of, 256.
Gratuity, receipt of, by officials, 66—68.
Grievous hurt, 151.

Hale, references to, 26, 28, 34, 45, 115, 138, 139, 140, 179, 187, 261.
Harbouring, deserter, 56.
escaped prisoner, 54, 93.
offenders, 90, 273.
persons for unlawful assembly, 64.
Hawkins, references to, 27, 45, 65, 82, 91, 126, 269, 280.
Hiring,
persons for unlawful assembly, 62.
HOLLAND,
Penal Code, 251, 256, 258, 259, 263, 266, 267, 272, 273, 276, 281, 282, 283, 284, 286, 287, 290, 291, 292, 293, 294, 296, 297, 300, 302, 303, 304.
Homicide, accidental, 26.
amounting to murder, 133.
culpable, 131.
not amounting to murder, 135, 138.
by negligence or rash act, 141, 143, 283.
by simple omission, 132, 281.
House breaking, 208.
House trespass, 207.
Human body, offences affecting the, 131—174.
HUNGARY,
Penal Code, 251, 258, 259, 262, 264, 266, 267, 269, 270, 272, 273, 274, 276, 281, 282, 283, 284, 286, 287, 290, 291, 292, 293, 294, 297, 299, 300, 302, 303, 304, 305.

Hunger, stealing from, 179.
Hurt, definition of, 151.
by dangerous weapon, 153.
grievous hurt, 151.
Husband, harbouring of wife, 94.

Ignorantia juris, 24, 259.
Illegal, definition of, 14.
gratification, 66, 68, 269.
Imprisonment, kinds of, 15.
in default of fine, 20, 21.
Indecent, literature, 127, 280.
Information, omission to give, 73, 85.
furnishing false, 74, 75, 85.
Injunction, to discontinue nuisance, 126.
Injury, definition of, 14.
threat to cause, 78, 181, 240.
Insanity: See *Unsoundness of Mind.*
Insult, criminal, 241.
to public servant, 101.
Intention, criminal, 13.
in case of abetment, 43, 44.
in case of drunkenness, 29.
in case of homicide, 138.
Intimidation, criminal, 242, 303.
Intoxication: See *Drunkenness.*
Inundation, causing by negligence, 294.
mischief by causing, 203.
ITALY.
Penal Code, 28, 83.

Judge, definition of, 6.
judicial act when no offence, 25.
Judgment, posting up of, 15, 16.
publication of, 16.
Judicial acts, 25, 260.
Judicial murder, 82.
Judicial proceedings, publication of, 234, 301.
Jurisdiction, territorial, 2, 3, 251, 255.
Juror, personation of, 102.

Kidnapping, 165—170, 286.

Landmark, mischief to, 204.
Landowner, obligations in case of riot, 63.
Larceny: See *Theft.*
Larceny Act, 1861, 93.
Lawful guardian, 167.
Letter, opening of, 187, 290.
Liability, for act done by several persons, 11.
when offence committed by several acts, 12.
See *Criminal Liability.*
Libel: See *Defamation.*
Life, offences affecting, 131—150.
Life convict, attempt to murder by, 145.
murder by, 140.
return from transportation, 100.
Lighthouse, mischief to, 204.
Limitation of prosecution, 2, 3, 258.

Local law, 14.
Lotteries, 128.
LOUISIANA STATE,
Code of Criminal Procedure, 17, 119, 122, 289.
Penal Code, 5, 10, 17, 20, 22, 28, 34, 58, 70, 78, 83, 95, 103, 132, 143, 147, 158, 160, 162, 163, 167, 171, 172, 177, 188, 195, 209, 219, 226, 233, 235, 236.
Lunatic: See *Unsoundness of Mind.*
Lurking house trespass, 207.

Machinery, negligence with respect to, 123.
Maiming, 151.
Malice, doctrine of transfer of, 139.
Malicious injury to property: See *Mischief*, 200.
Malicious prosecution: See *False Charge.*
Malitia supplet ætatem, 263.
Manslaughter: See *Homicide.*
Marriage, offences relating to, 225, 230.
Married woman, action for enticing away, 286.
act under coercion, 34, 265.
adultery with, 229.
theft by, 176.
Measures: See *Weights.*
Medical examination of women, 285.
Medical practitioners, 118.
causing death by negligence, 142.
professional skill required in, 141, 283.
legal obligation to attend, 271.
Mens rea, 112.
Mignonette case, 27, 34, 140.
Minor, kidnapping of, 166.
selling for prostitution, 170, 171.
Mirror, references to, 82, 179.
Misappropriation, criminal, 186, 288, 290.
Miscarriage, causing of, 147, 283.
Mischief, 199—206, 293.
Mistake of fact or law, 24, 25.
Modesty, outrage on, 164, 249.
Montasquieu, quoted, 129.
Moveable property, definition of, 8.
Murder: See *Homicide.*
attempt to, 145.
Mutiny, abetment of, 55.
Mutiny Act, not to oust civil jurisdiction, 4, 56.

Navigation, offences connected with, 120.
Necessity, how far a justification for crime, 140, 179.
Negligence, causing hurt by, 157.
causing death by, 141, 283.
in performance of legal duty, 142.
in spreading infection, 115.
in suffering escape, 54, 98.
with respect to animals., 124.
to buildings, 124.
to fire, 122.
to machinery, 123.
to navigation, 120.
to poisons, 122.

NEW YORK,
Code of Criminal Procedure, 92, 126.
Penal Code, 2, 5, 16, 50, 67, 70, 73, 78, 79, 87, 96, 112, 115, 116, 134, 141, 146, 149, 150, 152, 163, 166, 169, 181, 183, 220, 227, 239.
Newspaper Libel Act, 301.
Nuisances, 112—128, 274—280.
what may constitute, 279.

Oath, definition of, 15.
omission to give, 271.
profane, 130.
refusing to take, 74.
Obscene literature, &c., 127, 280.
Obstruction, in public way, 120, 202.
to apprehension, 98.
to public servant, 76, 163, 270.
Offences against the State, 49, 54.
Offence, definition of, 13.
outside British India, 2, 3.
Officials, offences by, 3.

Peace, breach of,
insult to provoke, 241.
in public place, 65.
Perjury: See *False Evidence*.
Person, offences against the, 131—174.
Personation, false, 85, 102.
cheating by, 197.
of public servant, 71.
Petition, right to, 267.
tumultuous, 51.
Pharmacy Act, 118.
Piracy, 253, 290.
Poison: See *Drugs*.
hurt by, 153.
negligence with respect to, 122.
Police surveillance, 16.
Possession, definition of, 9, 288.
of counterfeit coin, 105.
recent, of stolen property, 178.
Premeditation, in murder, 134.
Prescription of offences, 258.
Press offences, 52.
Presumption, of negligence, 278.
Previous conviction, enhancement of punishment, 24.
Prisoner: See *Escaped Prisoner*.
Private defence, right of, 35—40, 265.
of possession of property, 58, 61.
Privileged communication, 237, 302.
Property, defence of, 35—40.
fraudulent concealment of, 86, 199.
hurt to extort, 154.
moveable, 8.
unclaimed, 291.
offences against, 174—212.
Property-marks, offences relating to, 220—223.
Prostitution, selling minor for, 170.

Provocation, assault on, 162.
causing hurt on, 156.
in case of homicide, 135.
with intent to cause breach of peace, 243.
with intent to cause riot, 63.
Prussian Penal Code, 265, 279, 283, 284, 291, 294.
Public, includes any class of, 5.
Public Health Act, 1875, 114.
health, safety, convenience, decency, and morals, offences affecting, 112—128.
justice, offences against, 78—102.
nuisances, 112—128, 274—280.
peace, disturbance of, 65.
Public place, drunkenness in, 245, 303.
fighting in, 65.
Public property, 203, 294.
Public servant, abetment of offence, 48.
allowing prisoner to escape, 54, 97.
breach of trust by, 190.
disobeying direction of law, 69, 95.
definition of, 7, 256, 269.
obstruction to, 76, 99, 163, 270.
personation of, 71.
taking illegal gratification, 66.
unlawful buying or trading, 70.
voluntarily causing hurt to, 155.
Public servants, offences by, or relating to, 66—71.
contempts of lawful authority of, 71—78.
liability of, for official acts, 255.
Public spring, fouling water of, 118.
tranquillity, offences against, 57—65.
Public way, mischief to, 202.
obstruction, 120.
rash driving or riding, 119.
Punishment, for cumulative offences. 22.
Punishments, 15—24.
rules for regulating, 17, 257.

Quarantine, disobedience to rule of, 116.
Queen's coin, 102.
Question, refusal to answer, 75.
Qui facit per alium facit per se, 41.

Rape, 172, 267, 287.
Rash act, causing death by, 141, 283.
causing hurt by, 157.
Rash driving or riding, 119, 277.
Receiving of stolen property, 191, 192, 292.
Recidivism, 16, 24, 259.
Reconviction, 24, 259.
Record, falsification of, 80, 81.
framing incorrect, 70, 95.
Religion, offences relating to, 128—130, 280.
Res ipsa loquitur, 144, 278.
Revelation of secrets, 292, 302.
Riding, rash, 119, 277.
Riot, definition of, 60.
in England, 58, 61.
obligations of landowner, 63.

Road, encroachment on, 112, 121, 202.
Robbery, 182.
Rout, 58.
Rumour, circulating false, 242.
RUSSIA,
Penal Code, 261, 263, 264, 271, 281, 282, 295, 297, 304.

Sailor, abetting mutiny of, 55.
Sale, of adulterated drugs, 118.
of noxious food, 117.
of obscene books, 127.
Scienter, 126, 279.
Scotland, criminal law of,
reference to, 173, 257, 266, 267, 268, 284, 285, 289, 294.
Seal, counterfeit for forgery, 218.
Secrets, revelation of, 292, 302.
Seditious libels, 51, 268.
Seduction, 169, 286.
Self-defence : See *private defence*.
Self-mutilation, 151, 284.
Self-preservation doctrines, 27.
Servant, breach of trust by, 190.
theft by, 180.
Slavery, kidnapping in order to subject to, 169.
Slave, buying or selling, 170.
Slave-Trade Act, 3, 255.
Soldier, abetting mutiny of, 55.
Solitary confinement, 23.
Special law, 14.
Stabbing, 153.
Stamp, counterfeiting government, 108.
Stamps, offences relating to, 108—110.
State, offences against the, 46—54.
State contracts, fraud in, 296.
State secrets, violation of, 292, 302.
Statutes applicable to India, 3.
rule of strict construction, 5.
Stephen, Sir James,
on the Penal Code, 1, 24.
Stephen,
Digest of Criminal Procedure, 3.
Crimes and Punishments, 24, 26, 30, 96, 116, 142, 143, 151, 187, 193, 236.
Stolen property, receiving of, 191, 192, 292.
Strict construction of statutes, 5.
Suicide, abetment of, 145.
attempt to commit, 146.
suttee, 138.
Suicide Americane, 282, 283.
Summary Jurisdiction Act, 1879, 27, 262.
Summons, disobedience to, 72.

Territorial Jurisdiction, 2, 3, 251.
Territorial Water's Jurisdiction Act, 254, 255.
Theft, 174—180, 287—290.
when amounts to robbery, 183.
Thieves, wandering gang of, 185.
Threats : See *criminal intimidation*.
act caused by, 33, 265.

Threats: extortion by, 182.
offence by married woman, 34, 265.
to injure public servant, 78.
Thuggee, 147.
Trade combinations, 243.
Trade marks, offences relating to, 219—223.
Trading, unlawful, 70.
Transportation, 18.
murder by life convict, 140.
unlawful return from, 100.
Treason: See *offences against the State.*
Trespass: See *criminal trespass.*
on burial places, 129.

Unclaimed proeprty, 291.
Unlawful assembly, 57.
hiring persons for, 62.
when amounts to rioting, 61.
Unnatural offence, 174.
Unsoundness of mind, 28, 263.

Vagrant, wandering gang of, 185.
Vessel, conveying in overloaded, 120.
definition of, 14.
mischief to, 205.

War, waging of, 49, 53.
Warrant, execution of, 36, 37.
Water, fouling public spring, 118.
Weapon: See *deadly.*
Weights and measures, offences relating to, 111.
Wife, adultery of, 229, 298.
offence by, 265.
harbouring of husband, 94, 273.
Will, destruction of, 219.
forgery of, 216.
Witchcraft, 246.
Woman, assault to outrage modesty, 164.
insult to modesty, 247.
kidnapping of, 168.
medical examination of, 285.
Worship, disturbance of religious, 128.
Wounding, 153.
Wrongful confinement, 158.
Wrongful restraint, 157.

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